



Arbitration CAS ad hoc Division (OG Turin) 06/006 Canadian Olympic Committee (COC) v. International Skating Union (ISU), award of 17 February 2006

Panel: Mr Dirk-Reiner Martens (Germany), President; Mrs Maidie Oliveau (USA); Mr Peter Leaver QC (United Kingdom)

Short track speed skating

Request for a declaratory judgment

Formalities of a protest under ISU regulations

Failure of the representatives of a national team to know the relevant rules for filing a protest

1. **As a general rule, under Swiss law, requests for declaratory judgments are only admissible if there is a particular interest of the requesting party in relation to such a declaratory decision and if he/she is unable to bring an action requesting an order for an act or omission.**
2. **Pursuant to Rule 123 of the ISU General Regulations, a protest against an alleged racing rule violation must be in writing and accompanied by the required deposit. No such application was made in the present case.**
3. **It is the responsibility of national teams to know the relevant rules. The failure of the national team to know the relevant rules in the present case was their failure, and not the failure of the Referee as it attempted to assert. It was the Applicant's decision not to follow the formalities provided for in the Rule which the Applicant itself invokes, i.e. Rule 123 of the General Regulations which clearly states what must be done.**

The Canadian Olympic Committee (COC), the Applicant, is the National Olympic Committee of Canada responsible for all aspects of Canada's involvement in the Olympic movement.

The International Skating Union (ISU), the Respondent, is the International Federation for Figure Skating and Speed Skating Sports throughout the world.

The ladies' short track speed skating final event of the XX Olympic Winter Games was held on 15 February 2006.

The Finals A event ended with the following placing:

- a) Wang, Meng (China);
- b) Radanova, Evgenia (Bulgaria);

- c) Leblanc-Boucher, Anouk (Canada);
- d) Disqualified: Fu Tianyu (China).

The Finals B event ended with the following placing:

- a) Roberge, Kalyna (Canada);
- b) Capurso, Marta (Italy);
- c) Novotna, Katerina (Czech Republic).

The first two finishers of the A race (Wang and Radanova) crossed the finish line side by side with the other two competitors approximately two meters behind.

After consulting with the assistant Referees and looking at the video replay, the head Referee for the competition, Mr Michel Verrault, disqualified the Chinese competitor, Fu Tianyu, for cross-tracking. He then signed the official result sheet for the event and proceeded to his office. On his way, he was approached by Mr Mark Mathies, the team leader for the Canadian short track team, who asked whether Mr Verrault had discussed the finish with the assistant Referees. Mr Verrault said that he had not. No further conversation then took place, and Mr Verrault proceeded to his office.

Following his brief conversation with the head Referee, Mr Mathies met with members of his team and discussed the event. They concluded that there had been a violation of the “kicking out” rule by the Bulgarian athlete Radanova.

About fifteen to twenty minutes after the end of the race Mr Verrault left his office. He met Mr Mathies again who told Mr Verrault that he wanted to file a protest. Mr Verrault replied that this was fine but that if the protest related to a decision on a racing rule such decision was not appealable. The conversation then ended, and Mr Verrault went on his way.

The COC never filed a formal written protest with the ISU.

The Applicant argues that upon reaching the finish line the Bulgarian athlete Radanova committed a “kicking out” offence and should have been automatically disqualified. If she had been so disqualified the Canadian athlete Leblanc-Boucher would have moved to second place, and the winner of the B final, Ms Kalyna Roberge of Canada, would have advanced to the bronze medal position.

While conceding that the head Referee in no way refused to receive a protest, the Applicant argues that Mr Verrault discouraged the Canadian team leader to file, and thereby, in effect, arbitrarily refused to entertain, a protest.

According to the Applicant there is a clear conflict between, on the one hand, Rule 293 paragraph 5d) of the ISU Special Regulations Short Track Speed Skating (the “Special Regulations”), which does not allow *“Protests against any decision concerning infringements of the racing rules”*, and Rule 123 paragraph 9 of the ISU General Regulations (the “General Regulations”), which provides that *“the Referee decides upon all protests”*.

The Applicant further submits that under the circumstances the head Referee should have viewed the instant digital replay which he is authorized to do under Rule 123 paragraph 9 of the General Regulations in order to determine whether Ms Radanova in fact committed a “kicking out” offence.

In summary, the Applicant argues that Rule 123 of the General Regulations entitles the Referee to review “field of play” decisions, and that he should have done so on the basis of a video review.

The Applicant requests the Court of Arbitration for Sport to

“determinatively interpret the ISU rules in the following way:

- a) *Rule 123 of the ISU General Regulations 2004 allows a protest to be filed and for the Referee to review the relevant video replay of the incident.*
- b) *Rule 293 (5) (d) of the Special Regulations for Short Track Speed Skating do not restrict a party to file a protest with the referee, in so far as it is not in contradiction with Rule 123 of the ISU General Regulations 2004.*
- c) *Order the ISU to instruct its Referee to review the video of the finish of the ladies’ Short Track Speed Skating Finals event, A final, and determine whether Ms Radanova committed a “kicking out” infraction, ...”.*

The Respondent submits that under Rule 123 paragraph 1 of the General Regulations protests must be lodged in writing along with a payment of 100.-Swiss Francs. Since no such protest was filed, the Applicant failed to exhaust the available internal remedies so that the Application is inadmissible according to Article 1 paragraph 2 of the CAS Arbitration Rules for the Olympic Games (the “CAS ad hoc Rules”) which provides that *“the Claimant must, before filing such request, have exhausted all internal remedies available to him/her pursuant to the statutes or regulations of the sport body concerned, (...)”*.

The Respondent further submits that the protest envisaged, but never filed by the Applicant would have had to be dismissed on the basis of Rule 293 paragraph 5d) of the Special Regulations which does not allow protests against decisions concerning racing rules such as the “kicking out” rule.

According to the Respondent, the Referee’s “field of play” decisions are final, even if hypothetically such decision is later shown to be incorrect.

The Respondent argues further that the Applicant incorrectly interprets Rule 123 paragraph 9 of the General Regulations *“as also including protests against racing rules. In fact this rule only applies to protests based on alleged violation of other competition rules or other circumstances which could be clarified by the help of using video replay”*.

According to the Respondent, no violation concerning racing rules was observed in regard to Ms Radanova, and even if she had in fact “kicked out”, the other necessary component of a “kicking out” violation was missing in that no danger was caused to other athletes. In any event, the Referee had no doubt as to Ms Radanova’s “action on the field of play”, and thus had no reason to make

use of his authority under Rule 292 paragraph 5(i) of the Special Regulations to view the instant digital replay.

Therefore, the Respondent requests the Panel to dismiss the application.

The Application was heard on 17 February 2006 in the presence of representatives of both parties and of the Bulgarian NOC and the IOC as interested parties. Mr Mark Mathies (short track team leader Canada) and Mr Michel Verrault (head Referee during the event in question) were heard as witnesses.

LAW

Legal Framework

1. These proceedings are governed by the CAS ad hoc Rules enacted by the International Council of Arbitration for Sport (ICAS) on 14 October 2003.
2. Both parties agreed to the jurisdiction of this ad hoc Panel and the Panel is satisfied that this dispute falls under Article 1 of the CAS ad hoc Rules.

Under art. 17 of the CAS ad hoc Rules, the Panel must decide the dispute *“pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate”*.

According to art. 16 of the CAS ad hoc Rules, the Panel has *“full power to establish the facts on which the application is based”*.

Relevant Provisions

3. Both the Applicant and the Respondent referred the Panel to a number of Rules in the General Regulations and the Special Regulations.
4. Rule 123 of the General Regulations provides:

“1. Protests

Protests must be lodged with the Referee in writing. At the same time 100 Swiss Francs or other convertible currency to the same value must be deposited.

(...)

9. The Referee decides upon all protests. There is no appeal from his decisions except according to Rule 124. In Short Track Speed Skating and Speed Skating, in deciding a protest, the Referee is authorized to review relevant video replay of the incident under consideration, if readily available”.

5. Rule 293 paragraph 2b) of the Special Regulations provides:

“Breaches of the racing rules are considered as follows:

KICKING OUT: Deliberately kicking out of any skate during any part of a race thereby causing danger including at the finish line or throwing the body across the finish line is forbidden and will lead to disqualification”.

6. Rule 293(5)(d) provides:

“Protests against any decisions concerning infringements of the racing rules will not be accepted”.

7. Rule 292 (5) (i) of the Special Regulations provides

“If the Referee is in doubt concerning any action on the field of play before a decision is made, then the Referee is authorized to view the Instant Digital Replay at full speed, slow motion or still picture, with the exception of matters concerning the starting procedure”.

Discussion

8. Under section 25a) and b) of the Application, the Applicant requests this Panel to “*determinatively interpret*” certain ISU Rules.
9. As a general rule, under Swiss law requests for declaratory judgments are only admissible if there is a particular interest of the requesting party in relation to such a declaratory decision and if he/she is unable to bring an action requesting an order for an act or omission.
10. Since under section 25c) of its Application, the Applicant also applied for an order that the Respondent “*instruct the Referee to ... review the video of the finish*” the Panel will construe, to the extent necessary, the ISU Rules solely in relation to its determination of this application.
11. As there is an application for an “act or omission” it follows that the request for a declaratory judgment set forth in Section 25a) and b) of the application must be dismissed.
12. As has been seen, the Parties disagree on the interpretation of the ISU Rules.
13. According to the Applicant there is a clear contradiction between Rule 123 of the General Regulations which appears to allow protests against any type of decision (including “field of play” decisions), and Rule 293 paragraph 5d) of the Special Regulations which specifically disallows protests against racing rules.

14. The Respondent on the other hand describes Rule 293 paragraph 5d) of the Special Regulations as *lex specialis* and the general provisions of Rule 123 of the General Regulations as *lex generalis* and emphasizes that this has always been the ISU's construction of these rules.
15. In the Panel's view, the ISU Regulations (the General Regulations and the Special Regulations) to the extent pertinent in the present case do not provide an easily intelligible or comprehensible Code. For example, it would be helpful if it were made clear which of the Regulations had priority, and in what circumstance. The apparent conflict between Rule 123 of the General Regulations, which, on its face, permits protests to be made without limitation as to the type of protest, and Rule 293 of the Special Regulations, which does not permit protests against breaches of racing rules was at the heart of this application. However, for at least the following two reasons, the Panel does not need to decide between the rival contentions as to the true construction of the Regulations.
16. First, if the Applicant is correct in saying that Rule 123 gives it the right to file a protest against an alleged racing rule violation, that protest must be in writing and accompanied by the required deposit. No such application was made.
17. Both parties to the relevant conversation testified that Mr Verrault clearly stated to Mr Mathies that he was welcome to file a protest, but that such protest would not succeed if it related to the racing rules. However, it appears that the representatives of the Canadian team were not fully aware of the formalities of a protest under the ISU Rules. It is the responsibility of national teams to know the relevant rules. The failure of the Canadian team to know the relevant rules in the present case was their failure, and not the failure of the Referee as it attempted to assert.
18. It was the Applicant's decision not to follow the formalities provided for in the Rule which the Applicant itself invokes, i.e. Rule 123 of the General Regulations which clearly states what must be done.
19. Since the Applicant failed to file a written protest which complies with these rules, the application must be dismissed.
20. Secondly, the Panel does not need to decide between the rival contentions as to whether or not a "field of play" decision is in issue in the present case. The Regulations clearly give the Referee discretion to view the instant digital replay if he is in doubt. In the present case, the Referee had no doubt, nor did the Assistant Referees. There is no allegation that the Referee or Assistant Referees acted in bad faith. As they had no doubt, the exercise of discretion by the Referee did not arise. The Referee's decision was not protested in accordance with the Regulations. It follows there is no reviewable decision for the Panel to consider.
21. The appeal must fail on these grounds as well.

On the basis of the foregoing facts and legal aspects, the ad hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The application filed by the Canadian Olympic Committee against the International Skating Union is dismissed.
2. (...).