



**Arbitration CAS ad hoc Division (OG Salt Lake City) 02/006, New Zealand Olympic Committee (NZOC) / The Salt Lake Organizing Committee for the Olympic Winter Games of 2002 (SLOC), award of 20 February 2002**

Panel: Mr. Dirk-Reiner Martens (Germany), President; Prof. Massimo Coccia (Italy); Mr. Hans Nater (Switzerland)

*Alpine skiing*

*Eligibility to compete for the Olympic Games*

*Interpretation of the "Qualification system" relating to alpine skiing*

*Estoppel*

**By accepting the entries of two athletes for both Slalom and Giant Slalom, SLOC induced them to prepare and train for both disciplines for which they were properly entered. To exclude them from competing in these two disciplines a few days before the events would be unfair and contrary to the doctrine of "estoppel by representation" which CAS applies as a general principle of law (*"An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief"*). Given the interaction of the International and National Federations with the Organizing Committees of Olympic Games (SLOC), both the athletes and the NOC which entered them are entitled to rely on the acts and omissions of SLOC as if they were acts or omissions of FIS.**

The Applicant is the National Olympic Committee ("NOC") for New Zealand (NZOC). NZOC applied to the ad hoc Division of the Court of Arbitration for Sport (CAS ad hoc Division) with regard to the participation of two of its athletes, Mr. Todd Haywood and Mr. Jesse Teat, in alpine skiing events. As of November 2001, Mr. Haywood was ranked by FIS in the top 500 in the world in Slalom and Mr. Teat was ranked in the top 500 in the world in Giant Slalom.

Pursuant to the "Alpine Skiing XIX Olympic Winter Games in Salt Lake City 2002, Qualification and Participation Criteria" (Technical Manual), the NZOC submitted its "Entry by Name Report" on 5 December 2001 to the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 (SLOC). It requires the NOCs to make an event selection. With respect to alpine skiing, the event selection portion of the form provides for Downhill, Super Giant Slalom, Giant Slalom, Slalom and Combined Downhill and Slalom. The NZOC nominated Mr. Haywood and Mr. Teat to compete in both the Slalom and Giant Slalom. In addition, each athlete signed and, through the NZOC, submitted an Athlete Entry Form for the Games.

On 28 January, a Delegation Registration Meeting was held at which the Chef de Mission of the NZOC, Geoff Balme, met with SLOC to sign forms and finalize issues on behalf of the NZOC

delegation. At the Delegation Registration Meeting, “SLOC will review the Sport Entries report, and raise any outstanding sport entries issues with the NOC, which may include qualification or quota clarification, missing information or errors with personal information” (3.6 of the Chef de Mission Manual). The SLOC confirmed the NZOC Entry Report and did not raise any issues relating to the eligibility of Mr. Haywood or Mr. Teat.

On 18 February 2002, a representative of SLOC met Mr. Haywood and Mr. Teat after practice and informed them that Mr. Haywood was not eligible to compete in the Giant Slalom and Mr. Teat was not eligible to compete in the Slalom. The athletes advised the NZOC of the problem and the NZOC contacted SLOC for clarification. SLOC in turn referred the NZOC to the International Ski Federation (FIS), and the NZOC subsequently spoke with Ms. Sarah Lewis, FIS Secretary General, and Mr. Martti Vusitalo, FIS Alpine Coordinator. The latter informed NZOC that Mr. Haywood did not meet the top 500 requirement in Giant Slalom and Mr. Teat did not meet the top 500 requirement in Slalom. Therefore, according to the FIS, the athletes were not eligible to compete in these events.

On 19 February at 9:30am and 2:30pm, Mr. Balme sent two letters to Mr. Simon Toulson of the IOC outlining the concerns of the NZOC and requesting a decision by the IOC on the issue. At 2:30 on 19 February, Mr. Balme also sent a letter to Ms. Sarah Lewis indicating that if the issue was not resolved by 3:30pm the NZOC would apply to CAS. NZOC did not receive written answers from either addressee.

At 3:40pm on 19 February 2002, the Applicant filed an application before the CAS ad hoc Division of the Olympic Winter Games in Salt Lake City, naming as Respondent the SLOC and as Interested Party the FIS, requesting that Mr. Haywood and Mr. Teat be allowed to compete in both Giant Slalom and Slalom.

On 19 February 2002, the President of the CAS ad hoc Division appointed as arbitrators Mr. Dirk-Reiner Martens (Germany), President of the Panel, Mr. Massimo Coccia (Italy) and Mr. Hans Nater (Switzerland).

The CAS summoned NZOC, SLOC, FIS and IOC to appear for a hearing at 9:30pm on 19 February 2002. The NZOC, SLOC, and FIS attended the hearing. The IOC declared that its representatives, Mr. Gilbert Felli, Director of the Sports Department, and Mr. Howard Stupp, Director of Legal Department, would be available over the phone at the time of the hearing.

During the hearing, all parties were given ample opportunity to present their views on the matter. Mr. Felli provided his comments by phone.

At 12:30am on 20 February 2002, after the hearing had been concluded and the Panel had deliberated, the Panel announced its Award to the parties indicating that it would give its reasons in writing later that day.

## LAW

1. These proceedings are governed by the CAS Arbitration Rules for the Games (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (“ICAS”) on 5 November 2001. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in art. 17 of the CAS ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS ad hoc Rules.
2. The jurisdiction of the CAS ad hoc Division arises out of art. 1 of the CAS ad hoc Rules read in conjunction with Rule 74 of the Charter.
3. 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”.
4. According to Rule 30, sub-rule 1.4 of the Olympic Charter, the role of the International Federation is to establish their criteria of eligibility to the competitions of the Olympic Games in conformity with the Olympic Charter, and to submit these to the IOC for approval.
5. 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”.
6. At the outset of the hearing the parties agreed that the CAS ad hoc Division had jurisdiction to resolve the dispute and waived any right they may have with respect to a prior exhaustion of internal remedies.
7. The Applicant submitted that its role in entering athletes into the Games was governed by its contractual relationship with SLOC. The Applicant further stated that it followed the Technical Manual and the Chef de Mission Manual provided by SLOC. Therefore, the Applicant deemed Mr. Haywood and Mr. Teat eligible to compete in both Slalom and Giant Slalom. Furthermore, the Applicant argued that the Qualification System was ambiguous in that it did not expressly specify whether a top 500 ranking was required for each discipline. The Applicant also noted that the rules allowing FIS to determine the start list of Slalom and Giant Slalom two hours before the draw (FIS Rules specific to the Olympic Winter Games 2002 in Salt Lake City) did not pertain to the issue of eligibility; rather, the rules only required a specification as to which of the eligible athletes for each team will actually compete in a specific event. The Applicant also stated that the New Zealand ski federation fully shared its views on this matter. The Applicant also submitted that there was no top 500 requirement with regard to eligibility for the last alpine skiing World Championships.

8. The SLOC agreed that the NZOC followed the process defined by it and admitted that the SLOC representatives made a mistake by not highlighting the eligibility problem of the New Zealand athletes when they received the Entry by Name Report.
9. FIS explained that it was requested to prepare the qualification criteria for the Games which were subsequently approved by the IOC. FIS stated that the purpose of the qualification system was to control the number of competitors at the Games and the size of the start list for each discipline. The FIS submitted that the NZOC's interpretation of the criteria was contrary to this objective as such an interpretation would allow a competitor qualified for one event to compete in all four events. The FIS finally contended that its interpretation was supported by the fact that the NZOC was the only delegation advocating such a different interpretation.
10. The parties disagree on the interpretation of the "Qualification System" relating to alpine skiing as set forth in the Technical Manual [and to be found also in the "FIS Rules specific to the Olympic Winter Games 2002 in Salt Lake City" (the "FIS Rules")], which reads as follows:

***Qualification System***

*Only those competitors who are ranked within the top 500 of the FIS Points List November 2001 will be qualified to participate. Downhill and super-G competitors require a maximum of 120 points in the respective discipline. Those NOCs that do not have a racer who meets the above criteria may enter one male and one female competitor each in the alpine events, on the condition that the athlete has less than 140 FIS points in the respective discipline in November 2001. Competitors in the downhill and super-G will continue to need a maximum of 120 points.*

*Qualification period : up to November 2001*

*Qualification deadline : November 2001 (or January 2002\*)*

*\* Competitors with fewer than 140 FIS points (120 FIS points in downhill and super-G) on the FIS points list published in the first week of January 2002 will be eligible to participate. That is providing that the competitor's NOC has applied to SLOC for accreditation and included those competitors in the estimated delegation size or entry by number.*

11. It is the Applicant's submission that, absent any language to the contrary, the sentence

*"Only those competitors who are ranked within the top 500 of the FIS Points List November 2001 will be qualified to participate."*

has to be read as saying that competitors who are ranked within the top 500 in any one of the alpine disciplines are qualified to participate in all alpine disciplines, provided the criteria with respect to FIS points are met. Therefore, according to the Applicant, Mr. Haywood, being ranked in the top 500 in Slalom (but not in Giant Slalom), is qualified to participate in Slalom and Giant Slalom, and Mr. Teat, being ranked in the top 500 in the Giant Slalom (but not in Slalom) is qualified to participate in Giant Slalom and Slalom.

Conversely, in the view of SLOC and FIS, the above sentence should be interpreted as requiring a top 500 ranking of an athlete for each discipline in order to be able to participate. Thus, in their view, Mr. Haywood is not eligible for the Giant Slalom and Mr. Teat is not eligible for the Slalom as they are not ranked in the top 500 in these disciplines. Mr. Felli on behalf of the IOC supported the view expressed by the SLOC and FIS.

12. The Panel has come to the conclusion that in the case in hand it is not necessary to decide which of the above interpretations is correct because in the circumstances of this case the SLOC and FIS cannot rely on their interpretation of the rule even if that interpretation was accepted by the Panel.
13. The formalities set out in the Technical Manual for alpine skiing as they relate to the entries of athletes are very detailed. Following a “qualification review” in April 2001, SLOC distributed an “Entry by Number form” in which each NOC had to fill in “the number of athletes it intends to enter”. Finally, by 28 January 2002 (the official registration deadline) an “Entry by Name form” must be received by SLOC with “the official entry of an athlete to compete *in a specific event ...*” (emphasis added).
14. The Manual for the Chefs de Mission states the following in Section 3.6:

*“3.6 Delegation Registration Meetings (DRMs)  
DRMs are mandatory for all NOCs, ...  
...  
Topics  
Sports Entries confirmation :  
SLOC will review the Sport Entries report, and raise any outstanding sport entries issues with the NOC, **which may include qualification or quota clarifications, ...**”* (emphasis added).
15. Finally, the FIS Rules provide the following :

*“All FIS disciplines Entries  
Time-limit for definite entries  
Definite entries per event, stating names and group classification of competitors according to the International Competition Rules, respectively the Rules for Entry to the OWG as published in the Technical Manual:  
Alpine disciplines:  
Downhill  
- at least one hour after the end of the last training run. Slalom, Giant Slalom and Super-G  
- this will be determined by the Jury, in principle two hours before the draw.”*
16. There is no disagreement among the parties that the Applicant meticulously followed the procedure outlined above. In particular, all parties confirmed that the names of both athletes in question have been entered as competitors in both Slalom and in Giant Slalom in the forms required in the registration process.
17. A report on the Delegation Registration Meeting held on 28 January 2002 expressly states that there were “no issues” with regard to the Applicant’s entries for alpine skiing. SLOC admitted

before this Panel that in fact no issue with respect to the participation of Messrs. Haywood and Teat in both Slalom and Giant Slalom was raised on the occasion of the Delegation Registration Meeting or at any time thereafter until approximately 02:30pm on 18 February 2002, less than three days before the Giant Slalom competition. According to SLOC, this was a “mistake” because in SLOC’s view both athletes were eligible only for the discipline in which they are ranked in the top 500 and this fact should have been highlighted to the Applicant during the Delegation Registration Meeting.

18. Under the circumstances described above, it is the Panel’s view that SLOC and FIS are estopped from invoking their interpretation of the “Qualification System” even if the Panel accepted their interpretation.

In reaching its decision, the Panel drew an analogy to the doctrine of “estoppel by representation” a doctrine firmly established in common law and known in other legal systems even though under a different heading (e.g. reliance in good faith, *venire contra factum proprium*). This doctrine which the Panel applies as a general principle of law (art. 17 of the CAS ad hoc Rules) is defined as:

*“An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief” (Blacks Law Dictionary, 7<sup>th</sup> ed. 1999).*

19. By accepting the entries for the two athletes for both Slalom and Giant Slalom, SLOC induced them to prepare and train for both disciplines for which they were properly entered. To exclude them from competing in these two disciplines at this late stage would be unfair and contrary to the above doctrine of estoppel. Given the interaction of the International and National Federations with the Organizing Committees of Olympic Games (SLOC in this case), both the athletes and the Applicant are entitled to rely on the acts and omissions of SLOC as if they were acts or omissions of FIS.
20. In reaching its conclusion, the Panel also took into account the following relevant circumstances.
21. The language of the Qualification System lends itself to interpretation and, in the Panel's view, both interpretations submitted by the parties may have merit in that the crucial sentence fails to specify whether a top 500 ranking is required for participation in each of the four disciplines.

The issue of entry of an athlete not only by name but also by discipline has been discussed in a decision of an ad hoc CAS Panel on the occasion of the Atlanta Olympic Games 1996. Section 8 of the said decision (CAS OG 96/001) states as follows :

*“Turning first to article 6.3.2 of the FINA by-Laws, the Panel notes that it does not state whether the concept of “entry” refers only to the identification of an athlete and his or her sport, or if it extends to the specific event. This means that it does not address (let alone resolve) the consequence of a timely identification of an individual which fails to state the relevant event.”*

23. It is fair to assume that this decision was at least a contributing factor when the IOC amended its regulations in connection with the entries of athletes by requiring an “Entry by Name Form” specifying the “specific event” in which the athletes will participate. Hence, it is this form and its review at the Delegation Registration Meeting which establish the eligibility of athletes for specific events at the Olympic Games.
24. The SLOC and FIS contend that the Delegation Registration Meeting is not the relevant point in time for questions of eligibility. Rather, in the view of SLOC and FIS, the “time-limit for definite entries” as per the FIS Rules (see 4.6 above) is decisive when determining whether a particular athlete is eligible for a specific event.
25. The Panel rejects this argument. The text of the FIS Rules and, in particular, the very limited time available for the “definite entry” (e.g. two hours before the draws in Slalom and Giant Slalom which take place at 5:00pm on the day prior to the event) make it clear that the meeting held for the “definite entries” is designed merely for a final determination of the actual participants in a race, i.e. the final decision by the respective teams specifying which athletes (whose eligibility has already been established) will participate. It is obvious that there will not be sufficient time to discuss, let alone resolve, any eligibility issue at that meeting. This is confirmed by the fact that, according to the FIS' statement at the hearing in this case, the meeting held for the “definite entries” is not attended by representatives of the NOC but merely by the team captains and the competition jury.
26. The Panel recognises that the interpretation given by the Applicant to the “Qualification System” (see 4.2 above) could lead to a very substantial increase in the number of participants in the respective events in that, in theory, any nation with one competitor in the top 500 in any one alpine discipline could enter that same competitor in all four disciplines. As explained above, in the case in hand the Panel did not have to determine which of the two possible interpretations given to the crucial sentence in the “Qualification System” is correct. The Panel does suggest, however, that the applicable regulations be amended to clearly state that a top 500 ranking in a particular discipline gives rise to a right to participate only in that very discipline.

**The ad hoc Division of the Court of Arbitration for Sport renders the following decision:**

1. The Application filed by the New Zealand Olympic Committee on 19 February 2002 is allowed.
2. Mr. Todd Haywood is eligible to compete in the Giant Slalom of the XIX Olympic Winter Games in Salt Lake City.
3. Mr. Jesse Teat is eligible to compete in the Slalom of the XIX Olympic Winter Games in Salt Lake City.