



Arbitration CAS ad hoc Division (OG Turin) 06/010 Australian Olympic Committee (AOC) v. Fédération Internationale de Bobsleigh et de Tobogganing (FIBT), award of 20 February 2006

Panel: Ms Maidie Oliveau (USA), President; Mr Hans Nater (Switzerland); Mr Massimo Coccia (Italy)

Bobsleigh

Eligibility of a bobsleigh team to participate in the Olympic Games

Distinction between an adverse analytical finding and an anti-doping rule violation

An adverse analytical finding is simply a report by the Anti-Doping laboratory that a sample is positive for a prohibited substance. Thereafter, the applicable Anti-Doping regulations (FIBT Regulations in this case) provide for an extensive process, including the athlete's rights: to ask for a B sample test, be present at the testing of the B sample, and to have a hearing to contest the adverse analytical finding. Only after that process has been completed and the adverse analytical finding is confirmed is an anti-doping rule violation found. As a result, a sanction is imposed on the athlete in the form of *Consequences* as defined in the FIBT Regulations.

The Australian Olympic Committee (AOC), the Applicant, is the National Olympic Committee of Australia responsible for all aspects of Australia's involvement in the Olympic movement.

The Federation Internationale de Bobsleigh et de Toboggan (FIBT), the Respondent, is the "*supreme authority*" in all matters relating to international bobsleigh and skeleton (Article 1.3 of the FIBT Articles of Association).

The Brazilian Olympic Committee (BOC), the Interested Party, is the National Olympic Committee of Brazil responsible for all aspects of Brazil's involvement in the Olympic movement.

The FIBT International Rules, Section 1.2.2.1 (the "Qualifying Rules") establish the eligibility criteria to participate in the Olympic Winter Games. According to the Qualifying Rules, "*the first two pilots in the 4-man standings of the North American Challenge Cup of the Olympic season...*" qualify for the Olympic Winter Games. In the North American Challenge Cup race held on 22 January 2006 in Königssee, Germany (the "Challenge Cup"), the Brazilian and the New Zealand 4-man bobsleigh teams qualified for the Olympic Winter Games by finishing first and second respectively. Australia, by finishing third in the Challenge Cup, did not qualify.

The BOC conducted out of competition doping control tests in Brazil on 4 January 2006. It was announced in the press on 14 February 2006 that the Brazilian bobsledder, Armando Dos Santos (“Dos Santos”), had tested positive for the banned substance, nandrolone, in the January 2006 doping control test. The lab report dated 13 February 2006 to the BOC and provided to the Panel confirmed this announcement. Dos Santos had participated as a member of the winning Brazilian 4-man bob team in the Challenge Cup race.

The BOC upon learning of Dos Santos’ positive analytical result withdrew his accreditation for the Olympic Winter Games and sent Dos Santos home.

The FIBT distributed a “position statement” dated 16 February 2006 identifying its position with respect to the above facts, which will be detailed below. In essence it is the submission of the FIBT that the above facts do not justify the Australian 4-man bob team to qualify for the Olympic Winter Games.

The AOC filed an application with the CAS Ad hoc Division asking for an order to declare the Brazilian 4-man bobsleigh team ineligible to compete in the Olympic Winter Games and to declare instead the Australian 4-man bobsleigh team eligible to compete in the same Games.

The AOC submits that the Brazilian 4-man bob team’s results from the Challenge Cup (and thus its qualification to compete in the Olympic Winter Games) be disqualified based on Articles 9 and 10.7 of the FIBT Doping Control Regulations 2004 (the “FIBT Regulations”). Applicant contends that *“the disqualification of the member of the crew has influence on the ranking obtained by Brazil during the World and Challenge Cups. The consequence is that the disqualification of the member of the crew has a direct effect on the Team (FIBT Regulations Article 11), that is disqualified itself for the Event, that gave Brazil the standing to participate to these Winter Games. For this reason the Brazilian crew should be declared ineligible and, as a consequence, New Zealand and Australia, the only countries that had a legitimate title to participate to the North American Challenge Cup, now have the right to be admitted to the Olympic Games.”*

As relief, Applicant requests:

1. The annulment of the FIBT decision to admit Brazil to the Olympic Winter Games;
2. An order to the effect that the AOC be entitled to participate in the Olympic Winter Games with its 4-man Bobsleigh team.

The Respondent submits that under Article 11 of the FIBT Regulations, the analytical positive result announced for Dos Santos is not conclusive of an anti-doping rule violation. Therefore, the consequences that would result from such a finding, namely the disqualification of the team on which the doped athlete competed, do not ensue. Further, the FIBT Regulations require that the testing which would disqualify a team take place at an Event in which the athlete competes. This was not the case for Dos Santos’ doping control as the test was conducted out-of-competition. The FIBT contends that the policy reasons reflected in Article 11 of the FIBT Regulations are specific in order to limit the consequences of an individual’s positive doping test on innocent members of a team.

The Respondent relies on the same provisions of the FIBT Regulations as the Applicant, but argues that they provide for consequences to a team as a result of an individual testing positive for an anti-doping rule violation only under the limited conditions provided in Article 11 of the FIBT Regulations, i.e. a positive doping test conducted during an *Event*.

The Respondent further stated in its position statement that “*even if the Brazilian four-man team were to be disqualified from its results of the Event of the North American Challenge Cup, there is no Rules provision to bump-up a team or athlete to a vacant qualifying position for entry into the Olympic Winter Games*”.

The BOC submits that according to the Court of Arbitration for Sport Arbitration Rules for the Olympic Games (the “CAS Ad hoc Rules”), Article 10, the Applicant’s application must fail because it does not include, as required by the CAS Ad hoc Rules, “*a copy of the decision being challenged, where applicable*”.

Further, the BOC argues that Dos Santos has asked to see the B sample test of his positive analytical finding, he is back in Brazil looking for a lawyer, he has not had the hearing required by the FIBT Regulations and no final determination has been made whether Dos Santos has committed an anti-doping rule violation. Dos Santos has not been provisionally suspended. The doping control test was conducted *out-of-competition* and thus in accordance with Article 11 of the FIBT Regulations, the test was not conducted during an *Event* as required.

The Application was heard on 19 February 2006 in the presence of representatives of both parties and of the BOC as an interested party and the International Olympic Committee as an observer. There were no witnesses. At the end of the hearing, the parties confirmed that they were granted a fair opportunity to present their case.

LAW

Jurisdiction

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. All 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.
3. Under Article 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 Article 16 of the CAS ad hoc Rules, the Panel has “full power to establish the facts on which the application is based”.

Applicable Law

5. The FIBT Regulations read as follows:

ARTICLE 9 – AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

A violation of these Anti-Doping Regulations in connection with an In-Competition test automatically leads to Disqualification of the individual result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes.

ARTICLE 10 – SANCTIONS ON INDIVIDUALS

10.7 Disqualification of Results in Competitions Subsequent to Sample Collection

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other doping violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

ARTICLE 11 – CONSEQUENCES TO TEAMS

If a member of a team is found to have committed a violation of these Anti-Doping Rules during an Event, the team shall be Disqualified from the Event.

ARTICLE 14 – NATIONAL FEDERATIONS INCORPORATION OF THE FIBT REGULATIONS, REPORTING AND RECOGNITION

14.1 Incorporation of the FIBT Anti-Doping Regulations

All National Federations shall comply with these Anti-Doping Regulations. These Anti-Doping Regulations shall also be incorporated either directly or by reference into each National Federations Rules. All National Federations shall include in their regulations the procedural rules necessary to effectively implement these Anti-Doping Regulations...

14.4 Public Disclosure

Neither the FIBT nor its National Federation nor WADA shall publicly identify Athletes whose Samples have resulted in Adverse Analytical Findings, or who were alleged to have violated other Articles of these Anti-Doping Rules until it has been determined in a hearing in accordance with Article 8 that an anti-doping rule violation has occurred, or such hearing has been waived, or the assertion of an anti-doping rule violation has not been timely challenged [or the Athlete has been Provisionally Suspended]. Once a violation of these Anti-Doping Regulations has been established, it may be publicly reported within 20 days.

APPENDIX 1 – DEFINITIONS

Adverse Analytical Finding. A report from a laboratory or other approved Testing entity that identifies in a Specimen the presence of a Prohibited Substance or its Metabolites or Markers (including elevated quantities of endogenous substances) or evidence of the Use of a Prohibited Method.

Consequences of Anti-Doping Rules Violations. An Athlete's or other Person's violation of an anti-doping rule may result in one or more of the following: (a) Disqualification means the Athlete's results in a particular Competition or Event are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes; (b) Ineligibility means the Athlete or other Person is barred for a specified period of time from participating in any Competition or other activity or funding as provided in Article 10.9; [and (c) Provisional Suspension means the Athlete or other Person is barred temporarily from participating in any Competition prior to the final decision at a hearing conducted under Article 8 (Right to a Fair Hearing).]

In-Competition. For purposes of differentiating between In-Competition and Out-of-Competition Testing, unless provided otherwise in the rules of an International Federation or other relevant Anti-Doping Organization, an In-Competition test is a test where an Athlete is selected for testing in connection with a specific Competition.

6. Even though the Applicant did not attach a decision by the FIBT not to act to disqualify the Brazilian Bobsleigh team, the application is admissible as the CAS Ad hoc Rules specify the decision is to be attached, *if applicable* which was not the case here.
7. The FIBT Regulations apply to both the BOC and AOC as set forth in Section 14.1 of the FIBT Regulations.
8. In evaluation this case, it is important to distinguish between an adverse analytical finding and an anti-doping rule violation. An adverse analytical finding is simply a report by the Anti-Doping laboratory that a sample is positive for a prohibited substance. Thereafter, the applicable Anti-Doping regulations (FIBT Regulations in this case) provide for an extensive process, including the athlete's rights: to ask for a B sample test, be present at the testing of the B sample, and to have a hearing to contest the adverse analytical finding. Only after that process has been completed and the adverse analytical finding is confirmed is an anti-doping rule violation found. As a result, a sanction is imposed on the athlete in the form of *Consequences* as defined in the FIBT Regulations.
9. In order for the Applicant to succeed, the Panel must first find that in accordance with the FIBT Regulations, there has been a finding of an anti-doping rule violation by a member of the Brazilian 4-man Bob team. The team member, Dos Santos, has not as of this date been found to have committed an anti-doping rule violation. No decision that Dos Santos committed an anti-doping rule violation has been rendered by any authority. The adverse analytical finding announced by the BOC in apparent disregard for Rule 14.14 of the FIBT Regulations that prohibit such public disclosure is not a decision pursuant to Article 13 of the FIBT Regulations which may be appealed to CAS. The Panel finds that to date Dos Santos has not been found to have committed an anti-doping rule violation, nor has he been provisionally suspended. The BOC has chosen to remove Dos Santos from the Olympic team based on its internal policies.

10. Because there has been no anti-doping rule violation found, the remainder of the Applicant's submissions do not need to be addressed by the Panel. The Application fails at the outset and therefore there is no need to interpret the meaning of Article 11 of the FIBT Regulations with respect to the effect that his doping infraction would have had on the "team" of which Dos Santos was a part at the Challenge Cup.

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 appeal filed by the Australian Olympic Committee against the Fédération Internationale de Bobsleigh et de Tobogganing is denied.
2. (...).