Arbitration CAS 2000/A/284 Sullivan / The Judo Federation of Australia Inc., the Judo Federation of Australia Inc. Appeal Tribunal and Raguz, award of 14 August 2000*

Panel: Mr. Malcolm Holmes (Australia), President, Mrs. Tricia Kavanagh (Australia); Mr. David Grace (Australia)

Judo
Olympic Games
Selection dispute

Any power to amend the criteria for selection must be subject to a limitation that it could not be exercised retrospectively once that allocation of points (earned in selection events and relevant for the selection in the 2000 Australian Olympic Team) had been made and once it had been scrutinised and confirmed.

Ms. Rebecca Sullivan ("The Applicant") is a competitor in the sport of judo and has made herself available for selection in the 2000 Australian Olympic Team.

The Judo Federation of Australia Inc. ("The First Respondent") is the governing body of the sport of Judo in Australia.

The First Respondent is responsible for nominating to the Australian Olympic Committee Inc. ("the AOC") athletes and officials for selection by the AOC as members of the 2000 Australian Olympic Team.

In the lead up to the 2000 Olympic Games the AOC desired to promote awareness and a clear understanding of its selection criteria by all athletes involved in the sport of Judo. For its part the First Respondent desired to have certainty in the selection criteria for athletes in the sport of judo and to ensure that its athletes and officials were aware and had a clear understanding of the manner in which athletes and officials would be nominated to the AOC for selection in the 2000 Australian Olympic Team.

By an Agreement made the 27th day of September 1999 ("the Agreement") the AOC and the First Respondent reflected their respective, but common, intentions as outlined above.

The Agreement purported to be a comprehensive agreement detailing nomination, participation and selection criteria. Annexed to the Agreement were the following:

* NB: This award has been challenged before the New South Wales Court of Appeal (Australia) (réf. CA 40650/00); cf. Judgment of 1 September 2000, delivered by the New South Wales Court of Appeal (Australia) in the case Angela Raguz v Rebecca Sullivan & Ors.

- *Annexure A* comprising the Participation and Qualification Criteria for athletes for the 2000 Olympic Games determined from time to time by the International Judo Federation (hereinafter referred to as "the IJF") and the International Olympic Committee (hereinafter referred to as "the IOC").
- *Annexure B* comprising the 2000 Australian Olympic Team Selection Criteria.
- *Annexure C* comprising the 2000 Australian Olympic Team Nomination Criteria developed by the First Respondent.
- *Annexure D* comprising the 2000 Australian Olympic Team Athlete Nomination Form.
- *Annexure E* comprising the 2000 Australian Olympic Team Officials Nomination Form.
- *Annexure F* (which was not put in evidence) comprising the 2000 Olympic Team Membership Agreement - Athletes.

Clause 5.3 of the Agreement provides that selection of an athlete in the Olympic Team is conditional upon the AOC confirming that the athlete has met all the applicable criteria for nomination and selection including the signing of the Team Membership Agreement (Annexure F).

The First Respondent has accepted that at all material times the Applicant has been eligible for nomination to the AOC for selection in the 2000 Australian Olympic Team.

Clause 7 of the Agreement has the heading "Appeal Process". Clause 7.1 provides as follows:

"Subject to clause 7.2, any dispute regarding an Athlete's nomination or non-nomination of an athlete by the NF to the AOC and whether arising during the term of this Agreement or after its termination will be according to the following procedure:

(1) The appeal process is two tier, with the appeal being first heard by the Judo Federation of Australia's Appeal Tribunal ("Tribunal") with any subsequent appeal to be heard by the Court of Arbitration for Sport.

(2) The sole grounds for any appeal are that the Nomination Criteria have not been properly followed and/or implemented.

(3) Any appeal by an athlete against non-nomination to the AOC must be made to the Tribunal. Any appeal must accord with the following procedure:

(a) The appellant must give written notice of his appeal to the chief executive officer of the NF within 48 hours of the announcement of the decision against which the appeal is made.

(b) Within 5 working days of submitting his or her written notice of appeal, the appellant must submit to the chief executive officer of the NF the grounds of that appeal accompanied by a non-refundable deposit of $100 payable to the NF.

(c) Unless otherwise agreed in writing between the AOC and the NF, the Tribunal will comprise the following persons appointed by the Board of the NF:

(i) a barrister or solicitor who will act as Chairman;

(ii) a person with a thorough knowledge of the Sport and who preferably has had recent international competition experience in the Sport; and

(iii) one other person of experience and skills suitable to the function of the NF Appeal Tribunal.

No person is eligible to be appointed to the Tribunal if he or she is a member of Board of the NF or its selection panel or by reason of his or her relationship with the appellant or any member of the Board of the NF or its selection panel would be reasonably considered to be other than impartial.

(d) The Tribunal will convene a hearing as soon as possible after the submission of the grounds of appeal. The hearing may occur in such manner as the Chairman decides, including telephone or video conferencing. The Tribunal is not bound by the rules of evidence but must observe the principles of procedural fairness.

(e) Prior to the hearing, the selection panel will provide the Tribunal and the appellant with a written statement as to the reasons for the decision against which the appeal is made.

(f) The Tribunal will give its decision as soon as practicable after the hearing and will provide the chief executive officer of the NF and the appellant with a statement of the reasons for its decision.

(g) The decision of the Tribunal will be binding on the parties and, subject only to any appeal to the Court of Arbitration for Sport pursuant to clause 7.1(4), it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than the said Tribunal.

(4) Any appeal from a decision of the Tribunal must be solely and exclusively resolved by the Court of Arbitration for Sport according to the Code of Sports-Related Arbitration. The decision of the said Court will be final and binding on the parties and it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than the said Court.

(5) An athlete wishing to appeal to the Court of Arbitration for Sport must give written notice of that fact to the chief executive officer of the NF within 48 hours of the announcement of the decision against which the appeal is made and must then file his or her statement of appeal with the Court or Arbitration for Sport within 5 working days.

(6) Failure to observe the above time limits will render any appeal a nullity provided that an athlete may apply to the body to hear the appeal in question for an extension of time in which to commence an appeal. The body to hear the appeal in question may grant such an extension of time only in extenuating circumstances outside the control of the athlete concerned."

Both the Applicant and Ms. Angela Raguz ("the Third Party") were competitors for selection in the Australian Olympic Team in Judo in the 52-kilogram weight division. Under the Agreement the only events in respect of which points were to be awarded and upon which the selection was to be based were the following:

(a) the 1999 Senior World Championships which were held between 4 and 11 October 1999;

(b) the 1999 USA Open Championships which were held between 23 and 24 October 1999;

(c) the Oceania Judo Union Championships which were held between 11 and 12 March 2000.

The Applicant competed in all three selection events and the Third Party participated in the latter two selection events. Their results were as follows:

Event	**Sullivan**	**Raguz**
1999 World Championships	9th place	Did not compete
1999 USA Open Championships	7th place	5th place
2000 Oceania Judo Union Championships	2nd place	1st place

After the final selection events, the Applicant said in evidence that the first indication that she received that she had not been nominated was when she was not invited to attend a meeting of the proposed Olympic Team in March 2000.

On or about 17 March 2000 the Applicant wrote to the First Respondent expressing her belief that she would not be nominated by the First Respondent for selection in the 2000 Australian Olympic Team.

On 10 April 2000 the Applicant wrote to the First Respondent requesting urgent advice as to when it was intended that the First Respondent would nominate its team to the AOC and when the Applicant would know whether she had been so nominated. The letter also foreshadowed a request to refer any non-nomination to the Judo Federation of Australia Inc. Appeal Tribunal ("the Second Respondent").

On 14 May 2000 the First Respondent's Committee of Management met to discuss, inter alia, its nominations to the AOC for the 2000 Australian Olympic Games Team. The Committee of Management of the Respondent unanimously passed a motion that in the Women's under 52-kilogram weight division Angela Raguz be the nominated athlete with the Applicant being a reserve athlete in that weight division. The First Respondent's Committee of Management further resolved that the Applicant be advised that her Appeal should be lodged with the Oceania Judo Union and that the First Respondent's Committee of Management had nominated this division to the AOC through the Oceania Judo Union selection criteria. On 11 June 2000 the Applicant wrote to the Oceania Judo Union appealing the decision by the First Respondent not to nominate her to the AOC. On 12 June 2000 the Oceania Judo Union wrote to the Applicant advising her that the Oceania Judo Union had no jurisdiction to hear the Applicant's appeal.

On 19 June 2000 the Oceania Judo Union wrote a further letter to the Applicant confirming that the Applicant's appeal should be directed to the First Respondent and further confirming that the Oceania Judo Union had no jurisdiction in the matter.

On 22 June 2000 the First Respondent wrote to the Applicant confirming her correspondence to the Second Respondent on 10 April 2000 and further confirming that her appeal must proceed pursuant to Clause 7.1 of the Agreement (set out above). Attached to that letter was a circular letter forwarded to the Applicant from the Section Manager Judo 2000 Olympic Games and dated 23 June 2000 advising the names of those athletes that had been nominated to the AOC by the First Respondent for selection in the 2000 Australian Olympic Games Team. That letter advised the procedures to follow in the case of an appeal and specified that the sole grounds for any appeal were that the Nomination Criteria had not been properly followed and/or implemented.

By letter dated 24 June 2000 the Applicant appealed to the Second Respondent against her non-nomination by the First Respondent to the AOC for selection to the 2000 Australian Olympic Team.

On 30 June 2000 the Applicant wrote to the First Respondent setting out the Applicant's Grounds of Appeal together with a request for clarification, information and documentation. The letter requested advice, amongst other things, as to the date, time and proposed venue for the Appeal Tribunal hearing. The letter also advised the intention to call Ms Sharon Rendle to give evidence at the hearing.

By letter dated 28 June 2000, Mr. Gerry Hay, Solicitor and Barrister of Rockdale NSW, advised the President of the First Respondent, Mr. J Deacon, that he had convened a panel to consider the Applicant's appeal. The other appointed members of the panel were Mrs. Margeurite Wilson and Mrs. Dianne Moffit. He further advised that the relevant documentation had been delivered to the nominated panel members the same day.

By letter dated 5 July 2000 Mr. Hay wrote to the Applicant's Solicitors advising that the Appeal Tribunal was *"now in operation"* and that he anticipated *"that the Tribunal would complete its task within the next week"*. In relation to the intention to call Ms Sharon Rendle to give evidence on behalf of the Applicant Mr. Hay stated *"I note your intention to call Ms Sharon Rendle to the Appeal and I must point out that the initial process does not involve examination of the parties concerned but relies on the documentation provided by all the relevant parties. Any subsequent appeal is a matter for the Court of Arbitration for Sport where examination processes are available."* Mr. Hay then proceeded to answer each of the Grounds of Appeal, in effect rejecting each of the grounds. The letter concluded that *"the initial appeal has commenced and is almost completed"* and that *"the Tribunal had reached a decision to consider the evidence in the first instance, on the documents provided by the parties"*.

By letter dated 6 July 2000 the Applicant's Solicitors wrote to Mr. Hay advising that the Applicant had not received the Selection Panel's Written Statement of Reasons as contemplated by Clause 7.1(3)(e) of the Agreement. The letter also requested the documents which had been requested in the 30 June 2000 letter to the First Respondent. The letter also complained that the Second Respondent had not been constituted in accordance with Clause 7.1(3)(c) of the Agreement, that the Tribunal was required to convene a hearing, allow the Applicant to give evidence, provide documents and call witnesses and that generally the Appeal procedure set out in the Agreement had not been followed. A copy of that letter to Mr. Hay was forwarded to the First Respondent on 6 July 2000.

By letter dated 11 July 2000 Mr. Hay wrote to the Applicant's Solicitors enclosing previously requested documentation, clarifying a number of matters that had been raised in previous correspondence and advising that he had *"a wide scope of choice in the format in which"* the Appeal Tribunal operated. He stated that *"sufficient documentation was available to indicate to the Tribunal that the Appellant did not meet the criteria"* and that *"the hearing may occur in such a manner as the Chairman decides, including telephone or video conferencing. My method of conducting this Tribunal was to provide all the relevant*

information to my colleagues along with permission for them to ring the Appellant if necessary and discuss with her, any query that they may have. I am informed that one of the members of the Tribunal did use this method to gain information for herself. I am now in the process of writing to Rebecca Sullivan and give her the decision of the Tribunal …".

On 13 July 2000 the Applicant's Solicitors wrote to Mr. Hay acknowledging receipt of his letter dated 11 July 2000 on 13 July 2000 and requesting that any decision of the Tribunal be delayed until the Solicitors had the opportunity to respond to Mr. Hay's letter. The author further indicated that he would respond in writing by *"close of business tomorrow"*. By letter dated 12 July 2000 which appears to have been faxed on 13 July 2000 the First Respondent wrote to the Applicant via her Solicitors advising that Mr. Hay had advised *"that the Tribunal has met and concluded the investigation and has upheld the selection criteria as applied"* by the First Respondent.

By letter dated 14 July 2000 the Applicant's Solicitors wrote to the First Respondent and gave notice that pursuant to Clause 7.1(4) of the Agreement the Applicant wished to appeal to the Court of Arbitration for Sport.

By letter dated 19 July 2000 the Applicant's Solicitors wrote to the Court of Arbitration for Sport enclosing an application form together with other relevant documentation.

The application form outlined the relief sought by the Applicant as being *"an order nominating Rebecca Sullivan to the AOC for selection in an OJU place at the 27th Olympiad in the Women's Judo under 52 kg weight division."*

Pursuant to the Order of Procedure, a copy of the Applicant's Appeal Brief was served on the Third Party and she was invited to attend and participate in the proceedings and the hearing on Saturday 12 August 2000.

At the commencement of the hearing, the Applicant indicated to the Court that the sole ground to be relied upon was that the nomination criteria had not been properly followed and/or implemented and that if properly followed then the Applicant would have been the nominated athlete. The other ground which related to discretionary considerations was then abandoned.

Pursuant to the Order of Procedure the First Respondent was required to provide by 12pm on Tuesday 10th August 2000 the written statement of reasons of the First Respondent's selection panel referred to in clause 7.1(3)(e) of the Agreement and the statement of reasons of the First Respondent's Appeal Tribunal for its decision. Neither of these documents (if indeed they are in existence as appears unlikely) was supplied to the Applicant or the Court.

LAW

1. At the hearing the sole Ground of Appeal was that on the true construction of the Agreement, the Nomination Criteria had not been properly followed and/or implemented. The Applicant submitted that the Nomination Criteria were inconsistent with the Participation Criteria and pursuant to clause 4.3 of the Agreement the Participation Criteria prevailed over the Nomination Criteria to the extent of the inconsistency.

2. The Applicant submitted that:

   "The inconsistency between the Participation criteria and the Nomination criteria lies in the different points awarded towards an Oceania Judo Union ("OJU") place in the Olympics for an athlete who places ninth in the 1999 world championship. The participation criteria awarded 8 points to such an athlete; the nomination criteria only awarded 6 points".

   The Applicant relied upon the fact that Rebecca Sullivan was placed 9th in the 1999 World Championships and therefore earned 8 points whilst Angela Raguz did not compete in those championships. Further points relied upon were that the Applicant was placed 7th in the 1999 USA Open and thereby earned 3 points; Angela Raguz was placed 5th in the 1999 USA Open and thereby earned 6 points. The Applicant was placed second in the 2000 OJU championships and thereby earned 12 points; Angela Raguz was placed first in the 2000 OJU championships and thereby earned 15 points. The Applicant submitted that she has, therefore, accrued 23 points and Angela Raguz has accrued only 21 points. The nomination of Angela Raguz had been based on Rebecca Sullivan only being credited with 6 points as a result of her 9th place at the 1999 World Championships.

3. The only issue for determination therefore on the appeal was the proper construction and effect of the Agreement. If the construction and effect contended for by the Applicant was correct then she would have accumulated 23 points and the Third Party 21 points and the Applicant should be have been nominated. If the construction and effect contended for by the First Respondent was correct then both parties would have accumulated 21 points and as the Third Party achieved a higher place in the 2000 OJU Championships, the Third Party was correctly nominated.

4. The Court was not asked nor required to consider the respective abilities or performances of both athletes. All parties proceeded on the basis that both were suitable for nomination and no other athletes matched them in their division of the sport. The Court was not asked or required to make any evaluation of the merits or appropriateness of the selection system adopted by the First Respondent. No discretionary matters or subsequent circumstances were relied upon by any of the parties.

5. All parties proceeded on the basis that if the construction and effect of the Agreement contended for by the Applicant was correct then the Applicant should be nominated and if unsuccessful then the Third Party's nomination would stand. No party submitted that if the

appeal should be upheld then the issue of whom should be nominated should be remitted back to the First Respondent or its selection panel for further consideration. The sole issue for determination by the Court was thus the proper construction and effect of the Agreement.

6. It is necessary to consider in detail the terms of the Agreement and the various annexures which were attached to the Agreement when executed on 27 August 1999.

7. There are five Recitals to the Agreement. Recital D provides that:

"The AOC wishes to promote awareness and a clear understanding of its Selection Criteria throughout the Sport."

8. Recital E provides that:

"*The NF desires to have certainty in the selection criteria for athletes and to ensure that its athletes and officials are aware and have a clear understanding of the manner by which it will decide to nominate Athletes and Officials to the AOC for selection in the Team.*"

9. Clause 1.1 of the Agreement defines certain terms. Amongst those terms are "Nomination Criteria", "Participation Criteria" and "Selection Criteria". The Nomination Criteria were included in Annexure C, the Participation Criteria included in Annexure A and the Selection Criteria included in Annexure B.

10. Clause 1.2(6) provides that:

"*The Recitals to this Agreement are incorporated into the operative portion of this Agreement as if repeated in full.*"

11. The Agreement critically imposes on the First Respondent in clause 3.1 the obligation to "*abide by the Selection Criteria and this Agreement in nominating Athletes for selection as members of the Team*". The essence of the case for the Applicant is that she would have been nominated had the First Respondent abided by the Selection Criteria and the Agreement.

12. Clauses 3.1 and 4.3 of the Agreement, collectively, provide that:

(a) the Participation Criteria will prevail over both the Selection Criteria and the Nomination Criteria (clauses 3.1 and 4.3); and

(b) the Selection Criteria will prevail over the Nomination Criteria (clause 4.3).

13. Clause 4.3 of the Agreement states:

"The NF will develop the Nomination Criteria no later than 12 months prior to the NF's first nomination event for the Games, or as agreed with the AOC. The Nomination Criteria will be at all times subject to:

(1) the prior approval of the AOC;

(2) the Participation Criteria; and

(3) the Selection Criteria.

In the event that the Nomination Criteria are inconsistent in any way with the Participation Criteria and the Selection Criteria, the latter will prevail to the extent of that inconsistency.

Once the Nomination Criteria are so developed and approved, they will be deemed to be automatically incorporated into this Agreement as Annexure C and the NF will publish them to all persons to whom it has provided a copy of the Agreement".

14. Clause 4.4 of the Agreement ensures that the Nomination Criteria must be applied in a way to ensure that "*no Athlete is nominated to the AOC where another Athlete is, or other Athletes, are entitled to be nominated in priority".*

15. Clause 8.3 and 8.4 of the Nomination Criteria (Annexure C of the Agreement) provide as follows:

"8.3 To qualify for an OJU place, an athlete must comply with the selection criteria set out in Attachment 2. (OJU Olympic Selection System).

8.4 Subject to clause 8.2 and 12, the NCC will nominate an athlete who has qualified for an OJU place, provided that athlete meets the preconditions for nomination set out in clause 11."

The Applicant submitted that as she qualified for an OJU place the First Respondent was obliged to nominate her and accordingly this court should substitute the Respondent's decision.

16. The Respondents contended, supported by the Third Party, that as clause 7.1(2) states that the sole ground for an Appeal is that the Nomination Criteria have not been properly followed and/or implemented, the Applicant was restricted to a complaint about a breach of the words found in Annexure C, Nomination Criteria, as being the basis of the Appeal. The difficulty with this submission is that within the Annexure C itself there is an obligation in Clause 6.2.2 that in order to be selected athletes must satisfy the requirements in the Selection Criteria in Annexure B. It is a requirement of Clause 5(1)(a) of the Selection Criteria in Annexure B that the athlete "*must have met the Participation and Qualification Criteria*". The language used both in the operative provisions of the Agreement and each of the Annexures makes it clear that they are interlinked and should be read together. It is the Court's view that on the proper construction of the Agreement the ground for an Appeal should not be so restricted and that the Court is able to determine whether there has been a breach of the Nomination Criteria by reading the Agreement as a whole.

17. The first question which arises is whether any rights flow to potential Olympic Athletes pursuant to the Agreement. It is clear from Recital E quoted above that certainty in Selection Criteria for Athletes and the ensuring that Athletes are aware of the manner by which nominations will be decided are the objectives of the parties to the Agreement. As a matter of the ordinary and natural meaning of the language used in the Agreement the parties intended an immediate and clear benefit to accrue to those Athletes. This is reinforced by the fact that clause 2.4 of the Agreement provides that:

"The NF will provide a copy of this Agreement to each member of the Shadow Team and all other individuals

and organisations with a legitimate interest in the selection procedures. The NF will, if requested by the AOC, provide that the AOC written acknowledgement from each such Athlete that the Athlete has read and is aware of this Agreement."

18. The Agreement defines the class of persons intended to be benefited by the Agreement. It is also reinforced by the definition of "Athlete" contained in Clause 1.1 of the Agreement which states:

"*means those athletes who participate in the sport and are registered members or recognised athletes of the N.F.*"

Further support is found in clause 11 of Annexure C (Nomination Criteria) which provides, inter alia, that in order for an Athlete to fulfil certain conditions prior to being considered for nomination, the Athlete must be a registered member of his or her State/Territory Judo Association which is a registered financial member of the First Respondent. In the opinion of the Court it is clear from the language used that the Agreement was intended to confer rights and legitimate expectations in relation to the Athletes in relation to whom it is directed from the time of its execution on 27 September 1999. It is clear that the Agreement including the Annexures form a comprehensive code in relation to the nomination and selection of Athletes, as defined, in the sport of Judo for the 2000 Olympic Games. The Agreement became the terms of reference for the Athletes and the Athletes by their participation in the selection events accepted and were entitled to rely upon the Agreement. We conclude that Athletes vying for selection in the 2000 Olympic Games Team in the sport of Judo have and at all times from 27 September 1999 have had a legitimate expectation that the provisions of the Agreement would be complied with.

19. The crucial question which then arises is whether the Respondents were required to apply the points table contained in Annexure A (which provided that 8 points would be provided for ninth place at the 1999 World Championships) or the points table contained in Annexure C (which provided that 6 points would be allocated for ninth placing at the 1999 World Championships). The terms of the Agreement and the Annexures provide a clear answer to this question. Where there is inconsistency then the provisions of Annexure A prevail over Annexure C, e.g. Clause 3.1, Clause 4.3 of the Agreement, Clause 1 and Clause 5(1)(a) of Annexure B and Clause 6.2.2 of Annexure C.

20. The Respondents sought support from evidence extraneous to the agreement notwithstanding that the Agreement contained an "entire agreement" clause in clause 9.1. This clause states that the "*Agreement contains the entire agreement between the parties*". Any reliance on earlier discussions about a draft proposal is inconsistent with the terms and objects of the Agreement.

21. The evidence from the Respondent's coaching director, who also held the position of technical director of the OJU, Mr. Peter Hermann, was that at a training camp held in late August 1999, the Applicant, together with other Athletes at the training camp was advised of a draft proposal to change the points table contained in Annexure A and to reduce the points

allocated for ninth place at the 1999 World Championships from 8 points to 6 points. In order for that draft proposal to become effected, it was necessary for the Executive of the Oceania Judo Union to approve the proposal. The draft proposal and the eventual amendment after all the Selection Events had been completed had a long history.

22. At the Executive Meeting of the OJU on 22 January 1998, its executive adopted a 2000 Olympic Selection System which, inter alia, provided 8 points for ninth place at the 1999 World Championships. By letter dated 11 March 1999, Mr. Hermann in his capacity as Technical Director of the OJU wrote to the Executive and proposed some amendments which included an amendment to the points tables so that the points would be reduced from 8 points to 6 points. On 6 September 1999, the Secretary of the OJU distributed a copy of the proposed amended points system to the Presidents of the member countries although it was not incorporated in the Participation Criteria annexed as Annexure A to the Agreement when executed on 27 September 1999. The Agreement in Annexure A allocated 8 points for ninth place at the 1999 World Championships. Accordingly any prior inconsistent or informal discussion was in the circumstances irrelevant.

23. Mr. Hermann stated that the Agreement including the Annexures thereto were forwarded to the Athletes, Coaches and Officials shortly after execution by the First Respondent but as the whole Judo Team was overseas at the time with most of the Athletes, Coaches and Officials returning to Australia at the end of October/November 1999, those Athletes, Coaches and Officials would not have received the document until after their return. Some time in late November 1999 Mr. Hermann was advised by the Judo Section Manager that there was an inconsistency between the points table of the Oceania Judo Union and that of the International Judo Federation. The Third Party had queried the inconsistency with him, together with another Athlete. Mr. Hermann wrote a letter dated 6 December 1999 to the Sports Director of the International Judo Federation advising of the inconsistency. The Sports Director of the International Judo Federation was confused and sought clarification in relation to the proposed amendment and by letter dated 17 December 1999 Mr. Hermann wrote to him and provided further information. Some delay then ensued.

24. It was not until 3 March 2000 that the International Judo Federation sent the proposed changes to the Oceania Judo Union qualification system and sought verification from Mr. Hermann that it was appropriate to seek confirmation with the International Olympic Committee. Mr. Hermann replied on 8 March 2000 confirming that the draft proposal be processed. On 23 March 2000 the IOC wrote to the National Olympic Committees of Oceania and advised them that an amendment had been made to the Oceania Judo Union qualification procedure for the Sydney 2000 Olympic Games. The result was a purported amendment to the qualification system by a change to the points awarded for a ninth placing at the 1999 World Championships from 8 points to 6 points.

25. By letter dated 14 March 2000, however, Peter Hermann as Technical Director of the OJU, wrote to the General Secretary of the Union setting out the final ranking for the 2000 Olympic Games of the OJU Athletes to be recommended for selection and in so doing

applied the proposed amendment to the points retrospectively system which gave the Third Party 21 points and the Applicant 21 points but ranked the Third Party ahead of the Applicant in accordance with the term of the Agreement which gave priority to that Athlete who achieved a higher place at the 2000 OJU Championships.

26. The Applicant relied upon Clause 5 under the heading "Oceania Judo Union" of Annexure A as emphasising the fact that when the points are gained by Athletes at the various competitions, the allocations occur at that time and not at a later time. Furthermore, if this was permissible it would produce the anomalous result that allocated points could be taken away from the Athlete after all the selection events have been completed. Clause 5 of Annexure A provides that the OJU points system will be the basis used by the Oceania Judo Union to recommend their representatives for the 2000 Olympic Games selection. Subclauses provide, *inter alia*, that points would be allocated for Athletes of all OJU member countries, points gained by Athletes "will be allocated at all selected Olympic selection events" (clause 5.1.3), points allocated at the 2000 Olympic selection will be constantly scrutinised by the OJU Technical Director or his delegate and confirmation of points claimed must be provided to the Technical Director by the President of the member country by supplying copies of the relevant draw sheets pertaining to each Athlete. At all material times the Technical Director was Peter Hermann.

27. The Respondents, supported by the Third Party, relied substantially upon the meaning of the phrase "Participation Criteria" contained in clause 1.1 of the Agreement. That clause defines that phrase as meaning "the Participation and Qualification Criteria for the Games for Athletes determined from time to time by the IF and the IOC and attached as Annexure A". The Respondents contended that the definition makes clear that the Participation Criteria as at the time of entry into the Agreement may change from time to time and that by the time the Nomination Criteria came to be developed and formulated the Participation Criteria had in fact changed by reducing the number of points to be allocated for ninth placing from 8 points to 6 points. This was so, it was contended, because at the time of the decision of the First Respondent to nominate its Athletes to the AOC, namely in May 2000, the points table contained within the Participation Criteria had in fact been amended. Thus the Respondents submitted the change to the number of points to be awarded even though made after all the selection events had been held was merely the result of the exercise of a right or power in the Agreement itself.

28. The Court finds that whatever may have been the subjective intention of the First Respondent in pursuing a change to the relevant points table the proposed change was not effective until after the three selection events had taken place. The language used in the Agreement and in the Annexures required action to be taken in relation to the points accrued at the 1999 World Championships. Any power to amend must be subject to a limitation that it could not be exercised retrospectively once that "allocation" had been made and once it had been scrutinised and confirmed. Furthermore no indication in writing had been given by the First Respondent to any of the potential Olympic nominees for selection that the points table was proposed to be changed prior to the change occurring.

29. The Court finds that in the particular circumstances of this case, all Athletes had a legitimate expectation that the issue of the nomination to the AOC would be governed by the documentation existing on 27 September 1999 which had not been amended prior to the selection decision by the Oceania Judo Union. The documentation as at that date, as it had at all times from 27 September 1999, objectively assured the Athletes that there would be awarded 8 points for a placing of ninth in the 1999 World Championships.

30. The Court concludes that as a matter of the proper construction of the Agreement, the Nomination Criteria were not properly followed and/or implemented in that they required the points table contained in Annexure A which remained in its unamended form until 23 March 2000 to be applied in the nomination by the First Respondent of Athletes to the AOC for selection for the 2000 Olympic Games Australian Judo Team.

31. Accordingly, the Court upholds the Appeal of the Applicant and orders that First Respondent nominate to the AOC the Applicant in substitution for the Third Party.

32. The Panel finds that the Second Respondent conducted a procedurally flawed appeal process. The Applicant was never given a statement of reasons by the selectors, as contemplated by the Agreement, nor any associated documentation or a proper chance to be heard, although she had notified the First Respondent of her concern at the selection processes as far back as 17 March 2000.

33. As a result of a determination of the Respondents not to consider her various complaints at the various stages, the other parties and the Court have been drawn into a full appeal on 12 August 2000. The Third Party has been led to believe from a March 2000 meeting of the proposed members of the Olympic Team that she was to be the nominated Athlete. For some five months she has held a belief that she would represent Australia and compete in the 2000 Olympic Games. This is a matter of grave concern. Responsibility for this is solely due to the actions and inactions of the Respondents.

The Court of Arbitration for Sport hereby rules :

1. The appeal is upheld and the decision of the Judo Federation of Australia Inc to nominate Angela Raguz to the Australian Olympic Committee for selection in the Women's Under 52-kilogram Division is set aside.

2. The Judo Federation of Australia Inc is directed to forthwith advise the Australian Olympic Committee that its nomination of Angela Raguz is withdrawn and substituted by the nomination of Rebecca Sullivan.

3. The award setting forth the results of the proceedings shall be made public unless all parties agree.

(...)