



**COURT OF ARBITRATION FOR SPORT (CAS)  
TRIBUNAL ARBITRAL DU SPORT (TAS)  
Ad hoc Division – XXI Olympic Winter Games in Vancouver**

**CAS arbitration N° OG 10/03 Virgin Islands Olympic Committee v. IOC**

**FINAL AWARD**

in the arbitration between

Virgin Islands Olympic Committee .....  
**(the "Applicant")**

and

International Olympic Committee (IOC) .....  
**(the "Respondent")**

and

Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) .....  
**(the "Interested Party")**

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**1. The Parties**

- 1.1. The Applicant is the Virgin Islands Olympic Committee. The Respondent is the International Olympic Committee (IOC). It opposes the Applicant's application.

**2. Facts**

- 2.1. The Applicant challenges the decision of the IOC, the Respondent, given on 3 February 2010, to refuse to re-allocate a men's skeleton quota position to the Applicant to allow an additional women's skeleton competitor to participate in the XXI Olympic Winter Games Vancouver 2010. On 27 January 2010 the Applicant formally petitioned the FIBT to reallocate the unused men's quota position to it for the women's competition. The Applicant's petition relied on the FIBT Qualification System for the XXI Olympic Winter Games Vancouver 2010 issued in November 2008 and a precedent established at the XX Olympic Winter Games Torino 2006 where a men's unfilled quota position was transferred to a woman in the sport of luge. The Applicant's petition was forwarded by the FIBT to the IOC, who, by its determination dated 3 February 2010, refused the Applicant the relief it sought. The Applicant seeks to have skeleton athlete Ms Alexa Putnam represent it in the women's skeleton competition in the XXI Olympic Winter Games, Vancouver 2010.
- 2.2. The Qualification System for the XXI Winter Olympic Games, Vancouver 2010 issued by the FIBT for skeleton refers to two events: Men's skeleton competition and Women's skeleton competition. There is a total of 50 athletes specified, comprising 30 men and 20 women.
- 2.3. The Applicant's claim is based on the simple fact that as only 28 positions out of a possible 30 positions have been filled in the Men's skeleton competition, the Women's competition should have its number of positions increased to 21 positions. If that occurred, as Ms Putnam is the next (and only) ranked eligible competitor, the Applicant should fill the vacant position.
- 2.4. The FIBT's Qualification System for XXI Winter Olympic Games, Vancouver 2010, is set out in a document (the 'Qualification System') established in collaboration by the FIBT and the International Olympic Committee ('IOC'). It was issued in November 2008. Chapter 4.1 of the FIBT International Rules Bobsleigh 2008 states, in relevant part, as follows:

*“Olympic Winter Games*

*The criteria for the right to participate in the Olympic Winter Games are determined by the I.O.C. The qualification rules are determined by the I.O.C. in collaboration with the F.I.B.T. The qualification rules are communicated directly by the I.O.C. to all National Olympic Committees.”*

2.5. The relevant parts of the Qualification System for skeleton are set out as follows:

2.5.1. *EVENTS*

*Men’s Skeleton Competition*

*Women’s Skeleton Competition*

*ATHLETE / NOC QUOTA*

*ATHLETES QUOTA 50 athletes*

*30 Men including host nation*

*20 Women including host nation*

*...*

*QUALIFICATION SYSTEM*

*GENERAL PRINCIPLES*

*Participation on the Olympic Winter Games is guaranteed for the best athletes. Representation of the host country and non-represented continents is also guaranteed, provided that athletes are ranked among the top 60 men or top 45 women in the FIBT Ranking.*

*The FIBT recognises five continents: Africa, America, Asia, Europe and Oceania.*

*The qualification process takes place via participation in the Federation’s competition activity. Qualification is achieved by the athlete’s results. They gain a qualification slot for their NOC.*

*The athlete quota is attributed to the NOC. They can choose with which athletes they wish to fill the places provided that the said athletes have taken part and were ranked, in the 2008/2009 and/or 2009/2010 competition seasons, in at least five international FIBT competitions on three different tracks.*

2.5.2. *SYSTEM IN DETAIL FOR WOMEN’S SKELETON*

*The participation in the Olympic Winter Games is limited to:*

*\* 2 NOCs with 3 athletes*

*\* 4 NOCs with 2 athletes*

*\* 6 NOCs with 1 athlete*

*The chosen athletes must be ranked among the top 45 athletes of the 2009/10 FIBT ranking of the 2009/10 season during the qualification period.*

2.5.3. *REALLOCATION OF UNUSED QUOTA POSITIONS*

*Places earned and not taken up are reallocated until all 30 places (Men) or 20 places (Women) are filled, in the following order of priority:*

*\* The highest ranked NOC(s) of non represented continents.*

*\* If the number of non represented continents surpasses the number of places available for reallocation, only the highest ranked athlete in the FIBT ranking will enable his/her NOC to send an athlete to fill a reallocation position.*

*\* In cases of equal points, the following decision criteria will be applied:*

a) First, the highest single points result obtained;

b) Next, the highest single points obtained during the previous race.

After this, if there are places still available for reallocation, only NOCs which do not already have a qualified athlete by the end of the qualification period will be considered.

\* Among the potential candidates for reallocation, only the highest ranked athlete in the FIBT ranking will enable his/her NOC to send an athlete to fill a reallocation position, provided that the athletes concerned have taken part and were ranked in at least five international FIBT competitions on three different tracks, during the 2008/2009 and/or 2009/2010 competition seasons, and ranked among the top 60 men or top 45 women in the FIBT Ranking List.

### **3. Procedure**

3.1. On 11 February 2010 the Applicant filed its application with the Court of Arbitration ad hoc Division ('CAS').

3.2. On 11 February 2010 the President of the Ad hoc Division of CAS, pursuant to Article 11 of the Arbitration Rules of the Olympic Games, constituted a Panel of three arbitrators to determine the Application: David Grace QC as president, and Liu Chi and José-Juan Pintó as co-arbitrators.

3.3. On 11 February 2010, the hearing was fixed for 12 February 2010 at 11.00am. Pursuant to Article 15 (c) of the Arbitration Rules for the Olympic Games, the parties, including the interested parties were summoned to appear at the hearing.

3.4. The hearing took place on 12 February 2010 at the CAS Hearing Room, 3<sup>rd</sup> Floor, Renaissance Hotel, West Hastings Street, Vancouver, British Columbia, Canada. In addition to the Panel, the following persons were present:

\* Mr Matthieu Reeb, CAS Secretary General

\* Ms Pauline Pellaux, CAS counsel

\* Mr Jean-Philippe Dubey, CAS counsel

For the Applicant:

\* Ms Julianne Abernathy, Team Captain, Virgin Islands Skeleton Team

For the Respondent:

\* Mr Christoph Dubi, IOC Sports Director

\* Mr Andre Sabbah, IOC Legal Department

For the Interested Party:

\* Mr Paul Pruszynski, Vice President FIBT

\* Mr Donald Krone, Director of Communication FIBT

\* Ms Sarah Storey, Counsel of FIBT

- 3.5. At the commencement of the hearing, the Panel brought to the attention of the parties a possible issue concerning the presence on the Panel of arbitrator Liu Chi. On his arbitrator's acceptance and statement of independence form Mr Liu Chi made the following disclosure *"I was retained by IOC as its China Counsel to attend a procedure of obtaining affidavits from four analysts of the WADA accredited laboratory in Beijing that took place on December 8, 2009 in relation to the cases of IOC v. Vadim Devatovskiy and Ivan Tsikhan (CAS 2009/A/1752, CAS 2009/A/1753). My role was limited to witness and administrative of the procedure, and it was completed on December 8, 2009, despite the fact that the cases are still pending at CAS"*. Liu Chi addressed the hearing as to the issue raised by the above statement. The parties confirmed at the beginning of the hearing that they did not object to Liu Chi serving as arbitrator.
- 3.6. All parties, including the Interested Party, were given the opportunity to present oral submissions in detail at the hearing. At the conclusion of the hearing, no party raised an objection or adverse comment in relation to the conduct of the hearing.

#### **4. The Applicant's Submissions**

- 4.1. The Applicant principally relies on what it contends is the proper interpretation of the relevant provisions in that part of the Qualification System that deals with the Re-Allocation of Unused Quota Positions (see above at paragraph 2.5.3).
- 4.2. The Applicant submits that the words *"places earned and not taken up are reallocated until all 30 places (Men) or 20 places (Women) are filled"* (emphasis by underlining added) mean, in the circumstances where only 28 places have been allocated in Men, that the unused places be capable of being allocated to Women. This would achieve the full quota of 50 athletes being met in the sport of skeleton, an objective of the FIBT and IOC as evidenced by the Qualification System.
- 4.3. The Applicant further submits that the Qualification System provides no rule to the contrary and that a precedent was set in the sport of luge in the XX Winter Olympic Games, Torino, 2006, when an unused Men's quota position was transferred to Women.
- 4.4. As there is no male candidate ranked among the top 60 men in the FIBT ranking list to fill the two reallocation positions available and the only female eligible is Ms Alexa Putnam (who is ranked equal 44<sup>th</sup> and otherwise eligible), it was submitted that the clear intent of the Qualification System (by reason of the use of the word "all") is that the Applicant

should be allocated one of the unused positions.

- 4.5. Furthermore, it was submitted that the distinction between the Men's and Women's skeleton events should not be relied upon; what was important was that the total quota of 50 athletes be satisfied.
- 4.6. At the hearing, correspondence was tabled between the Applicant and the FIBT wherein the FIBT clearly indicated it would request the Respondent to allocate any unused quota positions in the Men's competition to the Women's competition. The Applicant relied on this correspondence to base a submission that the Applicant had a legitimate expectation that it would be allocated a position in the Women's competition due to the FIBT support of its request.

## **5. The Respondent's Submissions**

- 5.1 The Respondent submits that in the discipline of skeleton there are two events, namely, separate Men's and Women's competitions. The Qualification System agreed to by the FIBT and the IOC makes this clear. There is a set maximum number of competitors per event.
- 5.2 The Respondent submits that in the Women's Skeleton competition event all 20 places have been allocated and that as a matter of principle no quota can be transferred from one event to another and that there are no provisions to increase the number of athletes in a given event.
- 5.3 Emphasis was placed on the need to preserve the integrity of the format of competition and there is no basis for the exercise of discretion to amend the qualification principles or provisions. This approach is needed in order to prevent arbitrary transfer of quota positions from one event to another or even one sport to another. It was submitted that in any given event, not all quota positions have to be filled and that the Qualification System clearly indicates an intention to fill each quota separately. This was emphasised by the use of the word "or" in the phrase contained within the reallocation processes: "*places earned and not taken up are reallocated until all 30 places (Men) or 20 places (Women) are filled ...*" (emphasis by underlining added). It was said that it was impermissible to bundle Men's and Women's together.
- 5.4 The Respondent submitted that the qualification rules were fair, equitable and transparent and gave every skeleton athlete the possibility to qualify over a period of two winter seasons. The FIBT, on behalf of its member federations, had endorsed the rules and collaborated in their formulation. Emphasis was placed on the fact that the principles of qualification and eligibility are different. Ms Putnam was eligible but not qualified to be

entered into the competition.

- 5.5 The Respondent further submitted that in the circumstances there could clearly be no legitimate expectation on the part of the Applicant to have a quota place in the Women's event allocated to it.

## **6. Submissions of the Interested Party**

- 6.1 The FIBT supported the submissions of the IOC.
- 6.2 The FIBT submitted that there could be no legitimate expectation on the part of the Applicant that it would be allocated a position in the Women's event. The communications between the Applicant and the FIBT wherein the FIBT indicated support for the Applicant's request, were no more than the FIBT giving support to a member federation. It was emphasised that although the FIBT could request the IOC to allow an additional Women's position, the FIBT could not bind the IOC and at all times the response in relation to the request was always within the sole jurisdiction of the IOC.
- 6.3 The FIBT also submitted that each member federation understood that it was the clear intention of the Qualification System that quotas could not be transferred between the separate Men's and Women's competition.

## **7. Law**

- 7.1. These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the "CAS ad hoc Rules") enacted by the International Council of Arbitration for Sport (ICAS) on 14 October 2003. 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 location of the seat of the CAS ad hoc Division in Lausanne, Switzerland, pursuant to art. 7 of the CAS ad hoc Rules.
- 7.2. The jurisdiction of the CAS ad hoc Division arises out of Rule 59 of the Olympic Charter. Furthermore, none of the Parties or the Interested Party disputed the CAS jurisdiction in their submissions at the hearing.
- 7.3. 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*".
- 7.4. 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*".

## 8. Analysis

- 8.1. The Panel has carefully considered the submissions of the parties and the documents submitted by them. The Qualification System is a legal document. It contains the provisions concerning the requirements that must be fulfilled in order to allow athletes to compete at the XXI Winter Olympic Games, Vancouver 2010. General rules of interpretation must be applied. The ordinary meaning of the words used must be considered in the context of the document under consideration, the document being considered as a whole.
- 8.2. The principal question to be determined is whether the Qualification System allows the transfer of any unused quota positions in the Men's Competition to the Women's competition. The words of the document must be given the closest scrutiny.
- 8.3. The starting point is the fact that there are two competitions in skeleton, men's and women's. This was accepted by all parties. Furthermore, although the document specifies an athlete's quota of 50 athletes, this provision is clearly qualified in the document. Firstly, the quota of 50 athletes is divided into 30 men and 20 women. Secondly, when describing the qualification system in detail for either men's or women's skeleton, clear words were used limiting the number of athletes in relation to Women's skeleton: "*The participation in the Winter Olympic Games is limited to*" (see paragraph 2.5.2 above).
- 8.4. This provision clearly indicates by simple calculation that the limit of athletes for women's skeleton is 20, provided that each of those athletes is ranked among the top 45 athletes in the 2009/2010 FIBT ranking list.
- 8.5. The reallocation provisions (see paragraph 2.5.3 above), in our opinion, clearly differentiates between the men's and women's competitions. The words used "*places earned and not taken up are reallocated until all 30 places (Men) or 20 places (women) are filled...*" clearly indicate that there can be no transfer of unallocated quota positions in one event to another. If that had been the intention of the Respondent, the provision would have read as follows: "*places earned and not taken up are reallocated until all 50 places are filled.*"
- 8.6. The Panel is of the opinion that the Qualification System introduced for the XXI Olympic Winter Games, Vancouver 2010 reveals the clear intention that each quota for the Men's and Women's competitions be filled separately and that the quotas cannot be bundled together. The Applicant's submission that there was no express provision preventing the transfer of the unused quotas from Men's to Women's competition does not affect our conclusion. Our role is to interpret the Qualification System document and in our opinion



the interpretation is clear, as explained above.

- 8.7. There is no basis upon which reliance can be maintained on the suggested “precedent” that occurred at the XX Winter Olympic Games, Torino 2006, in the sport of luge. Firstly, the rules under consideration for those Games were different to those considered by this Panel. Secondly, the Panel cannot legislate on behalf of the Respondent. As stated above, if the Respondent wishes to change the Qualification System to accommodate the request of the Applicant, it has full jurisdiction to do so. The Panel cannot compel the Respondent to amend its rules.
- 8.8. The Panel is of the further opinion that there could be no legitimate expectation on the part of the Applicant that it would be allocated an additional quota position in the Women’s competition. The communications between the Applicant and FIBT simply revealed compliance with the request of the Applicant to support the Applicant’s request to the Respondent. Nothing more is revealed in the evidence produced to the hearing, and, as such, falls well short of creating a basis for a sustainable claim of legitimate expectation.
- 8.9. There is force in the Respondent’s submission that the qualification system ought not be interpreted in a way that permits arbitrary transfer of unused quota positions from one competition to another.
- 8.10. It was within the province and jurisdiction of the Respondent to accede to the request of the Applicant communicated through FIBT to amend the Qualification System to allow for the transfer of unused quota positions from the Men’s competition to the Women’s competition. It declined to do so as was its entitlement.

**9. Decision**

On the basis of the foregoing consideration, the ad hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The application filed by the Virgin Islands Olympic Committee on 11 February 2010 is dismissed.
2. All other prayers for relief are denied.

Vancouver, 12 February 2010

**THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT**

President of the Panel

David Grace QC

Liu Chi  
Arbitrator

José Juan Pintó  
Arbitrator