

**CAS 2012/A/2845 Alexander Peterzell v. South African Sports Confederation and Olympic Committee (SASCOC) & South African Equestrian Federation (SAEF)**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr Stuart McInnes, Solicitor in London, England

Arbitrators: Mr Graeme Mew, Barrister in London, England and Toronto, Canada  
Mr Mark Hovell, Solicitor in Manchester, United England

*Ad hoc* clerk: Mr Darragh O'Sullivan, Barrister, London, United Kingdom

between

**ALEXANDER PETERZELL**

Represented by Mr Andrew Hunter QC; Mr Trevor Watkins and Ms Sarah Boon, Pinsent Masons LLP in London, United Kingdom

Appellant

and

**SOUTH AFRICAN SPORTS CONFEDERATION AND OLYMPIC COMMITTEE  
(SASCOC)**

First Respondent

and

**SOUTH AFRICAN EQUESTRIAN FEDERATION (SAEF)**

Both Respondents represented by Mr David Beasley QC; Mr John Cuzen, Cuzen Randeree, Johannesburg, South Africa

Second Respondent

and

**PAUL HART**

Represented by Mr Ian Mill QC; Mr Stuart Cutting and Ms Laura Heeley, Wright Hassall, London, United Kingdom

Interested Party

## **1. THE PARTIES**

- 1.1. The Appellant, Mr Alexander Peternell, is a 30-year-old South African Event Rider. He is the third-highest ranked South African rider (at number 164 with 76 points) in the Fédération Equestre Internationale ('FEI') Olympic Athletes Ranking – Eventing ('the FEI Rider Rankings').
- 1.2. The First Respondent is the South African Sports Confederation and Olympic Committee ('SASCOC'). The main business of SASCOC is to promote and develop high performance sport as defined in the National Sport and Recreation Amendment Act, No 18 of 2007 in the Republic of South Africa, as well as to act as the controlling body for the preparation and delivery of Team South Africa as defined in the Sport and Recreation Amendment Act, at all multi-sport international games including, but not limited to, the Olympic Games, the Paralympic Games, the Commonwealth Games, the World Games and the All Africa Games.
- 1.3. The Second Respondent is the South African Equestrian Federation ('SAEF'), formerly the South African Equestrian Council ('SAEC'), which is the domestic federation recognised by the FEI in South Africa. The SAEF has a number of local associations which are affiliated to it and which represent the various different equestrian disciplines, including the South African Equestrian Association ('SAEA') which is responsible for the administration of Eventing in South Africa. The SAEA were not a party to these proceedings.
- 1.4. The Interested Party is Mr Paul Hart. He is a 45-year-old South African Event Rider. He is the fifth-highest ranked South African rider (at number 442 with 5 points) in the FEI Rider Rankings.

## **2. FACTUAL BACKGROUND**

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the written submissions of the parties, the exhibits filed, in the case between the parties, as well as the oral pleadings and comments made during the hearing. Additional facts may be set out, where relevant, in the legal considerations of the present award.

- 2.2 On 24th May 2010, SASCO published the Policy and General Selection Criteria for the Olympic Games London 2012 ('the General Criteria').
- 2.3 In December 2010 there was a meeting between SASCO and the SAEC to determine the criteria for the selection of athletes if South Africa qualified to participate in the Eventing at the Games of the XXX Olympiad ('London 2012').
- 2.4 On or about 23<sup>rd</sup> June 2011, SASCO published the equestrian-specific selection criteria ('the Specific Criteria').
- 2.5 On 24th October 2011, FEI published its updated Qualification System for Eventing for London 2012 ('the FEI Criteria').
- 2.6 On 26<sup>th</sup> October 2011 Jane Jackman, Chairman of SAEF Technical Committee (and International Affairs) and Convenor of the National Selection Committee for South Africa ('the Selectors'), circulated an email to various parties, including the Appellant and the Interested Party, setting out criteria to be used by the Selectors ("the SAEF Criteria") in selecting the South African representatives at London 2012.
- 2.7 The Panel notes that the Appellant lives in England, whereas the Interested Party resides in South Africa. The Appellant moved to the United Kingdom in 2001. He believed that this was necessary if he was to be able to access top level events and training needed to become a world class event rider. According to him many of the world's top event riders of all nationalities are based in the UK. He states, however, that during his regular visits to South Africa he continues to contribute by teaching training clinics to South African riders and through his support for equestrian charities.
- 2.8 By letter dated 21<sup>st</sup> February 2012, SAEF informed the Appellant that he had been included in the short list for the individual Eventing slot at London 2012.
- 2.9 On 1<sup>st</sup> March 2012 the FEI Rider Rankings were published. The Appellant was ranked number 164, with 76 points, and the Interested Party was ranked number 442, with 5 points. South Africa was nominated to Group F (Africa and Middle East) to participate at London 2012 for Eventing for 1 athlete and 1 horse. This was confirmed by letter dated 27<sup>th</sup> March 2012 from Mr Tubby Reddy (CEO, SASCO) to the Director, Eventing and Olympic Department, of the FEI.

- 2.10 By email dated 6<sup>th</sup> April 2012, SAEF informed the Appellant and the Interested Party that the deadline for athletes and horses to achieve the FEI Criteria for selection was 17<sup>th</sup> June 2012.
- 2.11 On 7<sup>th</sup> April 2012 a statement was made in a press release, published on the SASCOC website, that the Appellant and the Interested Party had satisfied the FEI Criteria.
- 2.12 By email dated 26<sup>th</sup> April 2012, the Appellant confirmed to SAEF that the horse he had intended to participate with ('AP Uprising'), which had previously sustained injury, would not be available to participate at London 2012.
- 2.13 By email dated 27<sup>th</sup> April 2012, SAEF acknowledged to the Appellant that "*this gives the Selectors a clear picture of the situation*" and asked the Appellant to keep in touch.
- 2.14 Under the Specific Criteria the deadline for qualification for Selection of athletes for Eventing was stated to be the 30<sup>th</sup> April 2012 ('the SASCOC Deadline').
- 2.15 By an email dated 7<sup>th</sup> May 2012, Tiffany Dewar (International Affairs Liason, SAEA) advised Eric Bianchi (President, SAEA) that the Selection Committee of SAEA had confirmed the final selection as being the Interested Party (on Heartbreak Hill) and that the Appellant on Tiger's Eye II or Asih would be the "*second/third choice should any happen to [the Interested Party] or his horse*".
- 2.16 By email dated 8<sup>th</sup> May 2012, Eric Bianchi confirmed the Interested Party "*as our number 1 Eventer for the Olympic Games. However, as we all know the vulnerability of horses, we are still going to keep [the Appellant] as a 'reserve' in case – heaven forbid – something happens to [the Interested Party] or his horse. We will make the final announcement at the end of June as originally planned, so please treat this as sensitive until the final deadline, when we will make our selection official.*"
- 2.17 By email dated 10<sup>th</sup> May 2012, SASCOC communicated to SAEF that the "*1<sup>st</sup> Team Announcement is scheduled for 7 June 2012. Since your NF has qualified athletes/teams, you are requested to submit the names of athletes who will make up the final team for the games. We will require this by no later than 28<sup>th</sup> May 2012. The reason for this date is to allow us to get final ratification by the board and to discuss any other issues prior to the announcement.*"

- 2.18 By email dated 11<sup>th</sup> May 2012, SAEF requested that SAEA should send “*the final names of [their] athletes going to London Olympics and Paralympics by 25 May 2012.*”
- 2.19 By another email also dated 11<sup>th</sup> May 2012, SAEF informed the Appellant and the Interested Party that SASCOC had nominated them both for selection to the Selectors and that “[*the Appellant*] *still [had] the possibility of qualifying Asih or Tigers Eye II.*”
- 2.20 On 18<sup>th</sup> May 2012, Eric Bianchi published an SAEA Newsflash (Issue 57) in which, inter alia, he stated “*both Eventing superstars, [the Appellant] and [the Interested Party] have qualified for London – the final selection will take place at the end of June, as there is alas only space for one.*”
- 2.21 By email dated 21<sup>st</sup> May 2012, SAEF confirmed the Appellant’s entry to an Event at Bramham which would allow him to qualify Asih.
- 2.22 By email dated 22<sup>nd</sup> May 2012, Tiffany Dewar, on behalf of SAEA, informed the Appellant that “*Jane Jackman, as convenor of the Selectors, has asked on behalf of the Selectors for you to forward the current status of your qualifications for London. The FEI cut off date is 17 June for qualification.*”
- 2.23 By email dated 23<sup>rd</sup> May 2012 Pam Fillery, on behalf of the Selectors, informed SAEF that, “*Due to the SAEF requirement that our Athlete and Horse nomination be submitted by the 25th May for the Olympics, and [the Appellant]’s failure to qualify at Saumur, our nomination is [the Interested Party] and Heartbreak Hill. The Selectors would like [the Appellant] to be informed of this decision before the SASCOC announcement of the team. It also appears to the Selectors that he has not been informed of the SASCOC cut-off date, as opposed to the FEI Olympic date, and we request that he be told about this as soon as possible. As Selectors, we very much hope that he will continue to pursue his efforts to qualify in order that he could be available as a substitution following injury or illness of the nominated combination.*”
- 2.24 By email also dated 23<sup>rd</sup> May, SAEF replied to the Selectors that, “*The confusion around actual documentation stipulating 25 May deadline prevented such from being*

*forwarded to either athlete, despite the wish to advise [the Appellant] as soon as possible while in pursuit of his qualification. We are all in agreement that he continue with his efforts to gain qualification.*

*Feedback would be appreciated on Eric's communication with SAEF regarding the differing deadlines, i.e. 25 May and FEI 17 June and SASCOC's understanding of this, together with the need for possible substitution and latest deadline for this if required.*

*[...]*

*In light of the Selectors' request, please advise both athletes of the above deadline and thereafter the President should notify the athletes and SAEF on the decision below.*

- 2.25 By letter dated 23<sup>rd</sup> May 2012 SAEA informed the Appellant that, *"it is very unfortunate that AP Uprising was injured during the latter part of 2011, which affected the Selectors' decision and, as a result of the SASCOC deadline being brought forward to 25<sup>th</sup> May, the final selection had to be made based on the current situation.*

*Therefore, on behalf of the SAEA and the National Selection Panel, it is with regret that I advise you that you have not been successful in securing the South African Individual Eventing slot at the 2012 Olympics.*

*It is hoped that you will continue to pursue your efforts to qualify in order that you could be available as a substitution should any unforeseen injury or illness affect our nominated combination.*

- 2.26 By email dated 27<sup>th</sup> May 2012, the Selectors informed the Appellant that, *"we are perturbed to hear that you were not aware the SASCOC deadline was brought forward to the 25<sup>th</sup> May. It came at short notice to us as well, but it is so that they can do their formal announcement of the entire SA Olympic Squad on the 7<sup>th</sup> June as was always the intention. However, and unfortunately, it is beyond our jurisdiction to take any action other than direct your correspondence to the SAEA for the necessary action."*

2.27 In a blog dated 6<sup>th</sup> June 2012, published on SASCOC's website, the President of SASCOC announced that, *"An initial team of 112 athletes to represent South Africa at this year's London Olympics was proudly announced by South Africa's Olympic governing body SASCOC on Wednesday. The final team to travel to London will be announced on July 4 after the qualification deadline for all sporting codes comes to an end.*

[...]

*'I have always said that the building of a team is like doing a jigsaw puzzle. So today we are putting just about the final pieces of that puzzle into place with only a few more additions likely after the final qualification cut-off.'*"

2.28 On 10<sup>th</sup> June 2012, the Appellant qualified Asih at Bramham.

2.29 By email dated 12<sup>th</sup> June 2012, SAEA informed the Appellant of the need to submit all of his certificates of capability to SASCOC.

2.30 By letter dated 14<sup>th</sup> June 2012, the Appellant wrote to SAEA and asked them to confirm that, *"now that there are two qualified combinations wishing to participate, that the National Selection Committee for eventing appointed under SAEA General Regulation 00.7.1 will now consider the matter in accordance with its regulations and decide which combination shall compete. I understand that the decision is then subject to approval by the technical committee and to be ratified by the management committee before the name is passed to SASCOC."*

2.31 By letter also dated 14<sup>th</sup> June 2012, addressed to the Appellant and copied to SAEF, SAEA stated, *"Firstly may I ask you to respect protocol. By copying SASCOC you have potentially embarrassed equestrian sport, and we strongly advise you to please direct your mail to this office, after which we will distribute it in the correct manner.*

*In answer to your correspondence, the Eventing selectors, who were officially nominated by the elected National Technical Committee, were tasked with selection for Evening for the London Olympic Games.*

*As previously communicated to you, SAEA were initially asked to submit the final selection to SASCOC by 28<sup>th</sup> May.*

*The dates were brought forward by the SAEF and SASCOC, and this was communicated to the selectors.*

*We also communicated to SASCOC that the FEI deadline was in fact 17<sup>th</sup> June. SASCOC however were scheduled to announce their team on 6<sup>th</sup> June, which they did.*

*The convenor of the selectors was kept up to speed with the whole process. The selectors have assured me that they are unanimous in their selection and that they have applied their minds to the process taking all the criteria into consideration.*

*As such we uphold their decision, and unfortunately, although we all understand your disappointment, the selection stands.*

*We are waiting for clarification from SASCOC about substitution should anything happen to Paul, and we hope that you would be available should the need arise.*

- 2.32 The 17<sup>th</sup> June was the deadline for athletes and horses to achieve the FEI minimum eligibility criteria.
- 2.33 By letter dated 18th June the Appellant wrote to SAEA asking them to apply their published criteria to the selection process.
- 2.34 On 20<sup>th</sup> June FEI published the Confirmation of Qualifications to London 2012. The Appellant features on the list twice (once on AP Uprising and once on Asih) and the Interested Party also features on the list on Heartbreak Hill.
- 2.35 By letter dated 23rd June, SAEF replied to the Appellant's letter on behalf of SAEA, informing him that the decision to select the Interested Party was confirmed and further informing him that he did not meet the General Criteria as he had not competed in the last National Championships (RSA) or World Championships preceding London 2012. This was confirmed by letter dated 25<sup>th</sup> June 2012. This is the first decision against which the Appellant appeals ('the First Decision').
- 2.36 On 2<sup>nd</sup> July 2012 SASCOC decided not to permit the Appellant to be selected in



accordance with the SAEF Criteria. This is the second decision against which the Appellant appeals ('the Second Decision').

2.37 On 3<sup>rd</sup> July 2012 SAEF reconfirmed their decision of 25<sup>th</sup> June 2012 in a letter addressed to the Appellant.

2.38 On 4<sup>th</sup> July 2012 the final team for South Africa for London 2012 was announced citing the Interested Party as South Africa's Individual Eventing representative.

### **3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

3.1. On 11<sup>th</sup> July 2012, the Appellant filed an appeal with CAS against the First Decision and the Second Decision and requested, *inter alia*, urgent provisional measures to be adopted.

3.2. In its statement of appeal, the Appellant requested the following relief:

*"The Decisions referred to above be annulled.*

*The CAS shall issue a new decision according to Article R57 of the CAS Code declaring that the Appellant does meet the SAEF and SASCOC eligibility criteria for selection for the South African Eventing individual place and the 2012 Olympic Games, and determining that, in accordance with the selection criteria published by the SAEF and SASCOC, the Appellant shall be selected by SASCOC to compete on behalf of the South African team as an individual in the eventing discipline at London 2012, replacing Paul Hart.*

*The Respondents shall bear the costs of this Arbitration and the Appellants' costs of and relating to the pursuit of this Appeal be met by the Respondents."*

3.3. The Appellant also requested that the appeals against the First Decision and the Second Decision should be consolidated and dealt with as a single appeal.

3.4. The Appellant also requested an expedited procedure.

3.5. The Appellant nominated Mr Graeme Mew as arbitrator. The Respondent nominated Mr Raymond Hack. By letter dated 12 July 2012, the CAS notified the statement of

appeal to the Respondents and asked the parties to provide the CAS with contact details for Paul Hart so that he could be advised of the procedure and the possibility for him to intervene, pursuant to Article R41.3 of the Code.

- 3.6. By letter also dated 12 July 2012, Mr Hart advised the CAS Court Office that he was aware of the procedure, he objected to any attempt to exclude him from selection and wished the matter “*to be heard as set out by both SASCOC and my National Federation, and agree to the arbitrator appointed by them*”.
- 3.7. On Monday 16<sup>th</sup> July, the Appellant challenged the appointment of Mr Hack as arbitrator on the basis that he was not independent of the Respondents, in particular for the reason that he was a legal advisor to SASCOC.
- 3.8. On 18<sup>th</sup> July, Mr Hack withdrew from the Panel and Mr Mark Hovell was nominated as replacement arbitrator. On the same date, Mr Darragh O’Sullivan, barrister in London, was appointed *ad-hoc Clerk* to the Panel.
- 3.9. By letter dated Wednesday 18<sup>th</sup> July 2012, the CAS informed the parties that the hearing would be held in person and by video conference in London, United Kingdom on Friday 20<sup>th</sup> July 2012. The parties were also advised that Stuart McInnes MBE had been appointed by the Division President as President of the Panel.
- 3.10. On the same date the Respondents filed their joint Answer with the CAS.
- 3.11. On the same date, the Panel notified the parties that the Interested Party should receive independent legal advice and was at liberty to attend the hearing and make representations if so advised.
- 3.12. On Thursday 19<sup>th</sup> July 2012 the Appellant filed a Response to the Respondents’ Answer with the CAS.
- 3.13. The Appellant appeared in person in London, United Kingdom and was represented by Pinsent Masons LLP, solicitors and Mr Andrew Hunter QC.
- 3.14. The Respondents appeared via video conference link from South Africa, represented by Cuzen Randeree, attorneys and Mr David Beasley SC.

- 3.15. The Interested Party appeared in person in London, United Kingdom, represented by Wright Hassall LLP, solicitors and Mr Ian Mill QC.
- 3.16. The Panel was assisted at the hearing by Ms Louise Reilly, Counsel to the CAS.
- 3.17. At the hearing, the Panel heard opening and closing submissions from representatives of all of the parties and heard evidence from Mr Tony Lewis, former President of SAEC by telephone conference call from South Africa and from the Appellant in person.
- 3.18. Each person heard by the Panel was invited by the President to tell the truth subject to the consequences provided by the law and was examined and cross-examined by the Parties as well as being questioned by the Panel.
- 3.19. At the conclusion of the hearing, the parties confirmed that they had no objection to the constitution of the Panel; were satisfied that they had been afforded a full and fair opportunity to be heard by the Panel; and had been treated equally in the proceedings.

#### **4. LAW**

##### **4.1. Jurisdiction**

- 4.1.1. The jurisdiction of CAS, which is not disputed between the parties, derives from Article 25.2 of the Articles of Association of SASCOC, Clause 25.1 of the Constitution of SAEF and Rule 61 of the Olympic Charter. In addition, there has been specific agreement by the parties that the Appellant's challenges to the decisions should be referred to the CAS in correspondence between the parties.
- 4.1.2. Article R47 of the CAS Code also provides basis for the jurisdiction of CAS in the present matter.
- 4.1.3. The scope of the Panel's jurisdiction is defined in article R57 of the CAS Code, which provides:

*“The panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.”*

4.2. **Admissibility**

4.2.1. The First Decision is dated 25 June 2012. The Second Decision was made on 2<sup>nd</sup> July 2012. The Appeal was filed on 11<sup>th</sup> July 2012.

4.2.2. The time limit for filing an appeal is governed, in the absence of an express period, by Article R49 of the CAS Code, which provides:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

4.2.3. In light of the above, the Panel concludes that the appeal was filed in due time and is admissible.

4.3. **Applicable Law**

4.3.1. Abiding by article R58 CAS Code, the CAS settles disputes:

*according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.*

4.3.2. Furthermore, as the seat of the CAS is in Lausanne, Switzerland, according to article R28 of the CAS Code this arbitration is subject to the rules of the Swiss Private International Law Act (hereafter referred to as “PILA”; 176 para. 1 PILA). Article 187 para. 1 PILA provides that the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any choice, in accordance with the rules with which the case has the closest connection (cf. CAS 2008/A/1453, preliminary decision of 8 February 2008, para. 6; Arbitration CAS 2006/A/1141, order of 31 August 2006, para. 6).

- 4.3.3. The Panel notes the applicability of the Articles of Association of SASCOC which provides that the jurisdiction and procedural actions shall be determined by CAS in accordance with the Code of Sport-related Arbitration.
- 4.3.4. As the bodies which issued the challenged decisions are domiciled in South Africa, the Panel also finds that, pursuant to Article R58 of the CAS Code, South African law is applicable on a subsidiary basis.

#### 4.4. **Scope of the Review**

- 4.5. The scope of the Panel's review which is in any event limited to the scope of the decisions appealed against is defined in Article R57 of the Code which provides that:

*“The Panel shall have the full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witness or experts, as well as oral arguments. He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply.*

*After consulting with the parties, the Panel may, if it deems itself to be sufficiently well-informed, decide or not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise.*

*If any of the parties is duly summoned yet fails to appear, the Panel may nevertheless proceed with the hearing.”*

- 4.6. As the Panel has the full power to review the facts and the law, this case is heard *de novo*. Indeed, it is the duty of the CAS Panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and the Respondents' allegations are correct on the merits, rather than limit itself to assessing the correctness of the previous procedure and decision (cf. CAS 2009/A/1880-1881, para. 146).

## 5. **THE CRITERIA**

- 5.1. The General Criteria refer to the SASCOC's selection policy and criteria. While the document makes reference to historical inequities which have informed SASCOC's current policies, counsel for the Respondents conceded that such considerations were not directly engaged by the circumstances of the Appellant and the Interested party. In respect of the criteria for each sport, the document provides:

*The preliminary requisites for all non-team sports seeking entry to the Olympic Games are that athletes and/or combinations of athletes but excluding relays must have:*

*- competed in the Federation's National Championships in their respective events/ immediately preceding the Olympic Games and/or;*

*- competed in the World Championship or its elimination competitions officially representing South Africa in their respective events/ immediately preceding the Olympic Games.*

- 5.2. The Specific Criteria apply only to equestrian disciplines and provide:

*“Over and above the Policy and General Selection Criteria, SASCOC and South African Equestrian Council (SAEC) agree on the following process for the selection of athletes for the 2012 London Olympic Games*

*[...]*

*Eventing*

*1. SASCOC will consider selection of athletes if qualification is attained through the FEI Olympic Riders Ranking, where selection will be on merit.*

*[...]*

*The deadline for qualification will be 30<sup>th</sup> April 2012.”*

- 5.3. The FEI Criteria

*“Article 623 – ATHLETES AND HORSES MINIMUM ELIGIBILITY STANDARD-  
EVENTING*

*All Athletes/Horses who take part in the 2012 Olympic Games Eventing Competitions must achieve the following minimum eligibility standard as a combination by obtaining "FEI qualifying results" in the following level of competition:*

*(i) 1 qualifying result at a CCI 4\*, or*

*(ii) 1 qualifying result in a CCI 3\* AND 1 qualifying result at a CIC 3\**

*An FEI qualifying result is achieved by completing the above competitions within the minimum parameters of an all-round performance, with;*

*(i) not less than 50% Dressage good marks (no more than 75 penalty points);*

*(ii) 20 jumping (at CCI and clear (0) at CIC) Penalties on Cross Country Obstacles, not more than 90 seconds over the optimum Cross Country phase time. At 4\* Events, the maximum time by which the optimum may be exceeded is 120 seconds;*

*(iii) not more than 16 jumping penalties on Show Jumping.*

*Athletes and Horses may obtain the minimum eligibility standard at Eventing Events at the specified level which take place between **1 January 2011 and 17 June 2012.**"*

#### 5.4. The SAEF Criteria

*"The Selectors are all in agreement with the following:*

*If RSA have the highest place Group F competitor in the FEI Olympic Riders Ranking we therefore become qualified to enter one individual and the selection process set out below would be followed:*

*1. The competitor placed highest in the FEI Olympic Riders Ranking*

*2. If 1 above is not available, then the next highest qualified competitor and so on.*

*3. The Selectors to decide how far down the qualified list they will go.*

*4. All of the above is subject to acceptance by SASCOC of our entry into the RSA Olympic squad."*

## **6. THE PARTIES' SUBMISSIONS**

6.1. The Panel clarifies that the following short summaries of the parties' positions are only roughly illustrative and do not purport to detail all of the submissions made by the parties. However, the Panel has thoroughly considered, in its deliberations, all of the evidence and arguments submitted by the parties, even if there is no specific or detailed reference to that evidence or those arguments in this award

### **6.2. The Appellant's Submissions**

6.2.1. The Appellant's position is that this issue comes down to eligibility. There are three sets of criteria which need to be satisfied, namely the General Criteria, the Specific Criteria and the FEI Criteria.

6.2.2. The Appellant satisfied the General Criteria because he represented South Africa officially at the elimination competitions pertaining to the 2010 FEI World Equestrian Games. He was put forward for the competition by SAEF and it is not possible to compete unless one does so under a national flag. At the competition and in the programme he was described as representing South Africa and his saddle bore the South African flag. He satisfied the General Criteria, therefore, from 2009.

6.2.3. The Appellant satisfied the Specific Criteria because by the deadline of 30<sup>th</sup> April 2012 he appeared on the FEI Olympic Riders Ranking.

6.2.4. The Appellant satisfied the FEI Criteria because, by 17<sup>th</sup> June 2012, he had competed on Asih at sufficient specified qualifying events.

6.2.5. Given that both the Appellant and the Interested Party were eligible, SAEF and SASCO were obliged to apply the published selection criteria (the SAEF Criteria) and make a decision by applying those criteria. SAEF and SASCO failed to do this. Had they done so, the Appellant would have been selected.

### **6.3. The Respondents' Submissions**



6.3.1. The Appellant has not fulfilled the General Criteria as, when he competed in the elimination competitions pertaining to the 2010 FEI World Equestrian Games, he was not *officially* representing South Africa. In order *officially* to represent South Africa it is necessary to receive official sanction from SASCOC prior to competing. The Appellant did not seek or receive this official sanction from SASCOC.

6.3.2. The Appellant was not the only South African rider to appear in the FEI Olympic Rider Classification list. He was actually the third South African on the list. However, as he had no available qualified horse as at 30 April 2012 he, like the first two riders on the list, failed to meet the Specific Criteria, which, the Respondents maintained must apply to both riders and horses.

#### 6.4. **The Interested Party's Submissions**

6.4.1. The phrase "qualification attained through the FEI Olympic Riders Ranking" relates to the qualification of South Africa into Group F of the Eventing at London 2012, and not to the qualification of the athlete.

6.4.2. Because the FEI Olympic Riders Ranking is compiled as at 1<sup>st</sup> March 2012, the deadline of 30<sup>th</sup> April 2012 on the Specific Criteria must be for something different; ie, not for the qualification of South Africa as a country.

6.4.3. Accordingly, the deadline of 30<sup>th</sup> April 2012 must be the deadline for the rider in combination with his horse being qualified.

6.4.4. Because the Appellant had not qualified his second horse, Asih, by that date, he was ineligible for selection.

### 7. **THE MERITS**

7.1. The main issues to be decided upon by the Panel are:

7.1.1. What are the relevant selection criteria for eligibility to compete for South Africa in Eventing at London 2012?

7.1.2. What are the relevant deadlines for satisfying those criteria?

7.1.3. Did the Respondents apply the relevant criteria properly in making their decisions?

**7.2. What are the relevant selection criteria?**

- 7.2.1. The starting point for eligibility is the mandatory FEI Criteria. An athlete must have satisfied these criteria in order to be capable of being selected by a National Olympic Committee.
- 7.2.2. As the National Olympic Committee for South Africa, it was open to SASCOC to impose additional requirements upon athletes for eligibility to compete on behalf of South Africa. SASCOC produced both the General Criteria which apply to all athletes, and the Specific Criteria which apply to equestrian events.
- 7.2.3. In determining the team to compete on behalf of South Africa, SASCOC invite the national federations to nominate athletes for selection. SAEF is the relevant federation for equestrian events which, in turn, produced the SAEF Criteria defining the parameters to be applied in deciding who to nominate.

**7.3. What are the relevant deadlines?**

- 7.3.1. The FEI Criteria prescribe a deadline of 17<sup>th</sup> June 2012, by which time Athletes and Horses must have obtained the minimum eligibility standard at Eventing Events. This was not disputed by the parties.
- 7.3.2. There is no express deadline specified in the General Criteria because the qualifying National Championships and World Championships took place on dates certain prior to the commencement of the selection process.
- 7.3.3. The Specific Criteria deadline:
- 7.3.3.1. The deadline specified in the Specific Criteria was 30<sup>th</sup> April 2012. The Panel considered the parties' submissions on the meaning and effect of this specified deadline and finds that it applies only to athletes and not to athletes and horses in combination.
- 7.3.3.2. On a plain and literal interpretation of the word "athlete" there is nothing in the Specific Criteria to suggest that this refers to both athletes and horses. The Panel is further persuaded by the fact that the Specific Criteria make express reference to

the FEI Olympic Riders Ranking and to the FEI Olympic Athletes Ranking, both of which, as FEI publications distinguish expressly between Athletes and Horses.

7.3.3.3. The Panel also rejects the Interested Party's submission that all of the Criteria must be interpreted as including Athlete and Horse in combination simply by virtue of the fact every Eventer knows that an athlete and a horse are required to compete. On this basis, it follows that the drafter of a specific equestrian policy would also be aware of the need for a horse and athlete and, with that in mind, had it been intended for this policy to apply to both horse and athlete in combination, it could have been done expressly.

7.3.4. There is no express deadline specified in the SAEF Criteria. As satisfaction of these criteria is achieved by appearance on the FEI Olympic Riders Rankings, published in 2012 on 1<sup>st</sup> March, it follows that the deadline for their satisfaction was that date.

7.3.5. On 6<sup>th</sup> April 2012 Jane Jackman sent the Appellant and the Interested Party an email with the subject line "FEI and SASCOG deadline updates. These deadlines were as follows:

*"FEI*

*15-Apr-12 FEI will allocate all available places*

*17-Jun-12 Deadline for athletes and horses to achieve the FEI minimum eligibility criteria*

*09-Jul-12 Deadline for LOCOG to receive all sport entry forms from NOCs*

*SASCOG*

*04-Apr-12 Kit launch*

*07-Jun-12 Olympic Games 1st team announcement (will ask for clarification in view of 17 June being FEI deadline for eligibility)*

*04-Jul-12 Olympic Games 2nd team announcement*

*17-Jul-12 Olympic Games pre-departure camp*

*18-Jul-12 Olympic Games Banquet*

*19-Jul-12 Team South Africa Departure”*

- 7.3.6. The only published deadlines for the selection by SASCOC of Team South Africa were 7<sup>th</sup> June 2012 when the first team announcement was to be made and 4<sup>th</sup> July 2012, when it had scheduled its final team announcement in anticipation of the London 2012 final deadline of 9<sup>th</sup> July 2012.
- 7.3.7. No evidence was presented of any official or published change to these dates. SASCOC had told SAEF on 10<sup>th</sup> May 2012 that it should submit the names of its nominated athletes by 28<sup>th</sup> May in order give sufficient time for SASCOC “to get final ratification by the board and to discuss any other issues” prior to the 1<sup>st</sup> Team Announcement on 7<sup>th</sup> June. SAEF then asked SAEA to send the “final” names of athletes going to the Olympics by 25<sup>th</sup> May 2012. Yet no-one informed the Appellant of the 25<sup>th</sup> May deadline until 23<sup>rd</sup> May. By then it was impossible for the Appellant to qualify Asih before the 25<sup>th</sup> or even the 28<sup>th</sup> May.
- 7.3.8. The Respondents imposed new deadlines for qualification on such short notice that the Appellant could have no hope of being selected to represent his country. Until the SAEA’s 23<sup>rd</sup> May 2012 letter to the Appellant, he had no reason to believe that he would not have a chance to qualify Asih in accordance with the FEI Criteria. He had governed himself accordingly. In the absence of any compelling evidence presented to the Panel (a) of justification for a change, or (b) of publication of any purported change to the deadline, the Panel finds that the Appellant was dealt with in an arbitrary and manifestly unfair manner. At the very least applicable deadlines should have been notified publicly and clearly so that any potential nominee had the opportunity to make appropriate arrangements, which may have included selecting alternative qualifying events and/or seeking an extension of the time limit for qualification.
- 7.4. **Did the Respondents apply the relevant criteria properly in making their decisions?**
- 7.4.1. Cogent evidence of which criteria, if any, were applied by the Respondents in reaching their decisions is lacking, thus rendering it impossible to determine if the decisions were properly taken. There was, however, evidence that at least within the SAEA, the Interested Party had been selected as early as 7<sup>th</sup> May 2012 and yet until as late as 22<sup>nd</sup>

May SAEA was communicating with the Appellant in terms that would have led him to believe he could still be selected.

7.4.2. The Panel considers that:

7.4.2.1. On proper application of the FEI Criteria, both the Appellant (on Asih) and the Interested Party (on Heartbreak Hill) were eligible for selection.

7.4.2.2. The Panel accepts the evidence of the Appellant, corroborated by Mr Lewis, that a pre-requisite to the entry to international competitions (including Olympic qualifying competitions) was official sanction from the national federation. The Appellant sought and received such sanction from the SAEF and, accordingly the Panel finds that he “officially” represented South Africa. On proper application, therefore, of the General Criteria, the Panel finds that the Appellant satisfied the requirement to have participated officially for South Africa in the elimination competitions for the 2010 FEI World Equestrian Games and thus satisfied the General Criteria.

7.4.2.3. Both the Appellant’s and the Interested Party’s names appeared on the FEI Olympic Athletes Ranking – Eventing as at 1<sup>st</sup> March 2012, thereby satisfying the Specific Criteria.

7.4.2.4. The Appellant qualified Asih in accordance with the FEI Criteria prior to the 17<sup>th</sup> June 2012 deadline for doing so.

7.4.3. In consequence, the Panel finds that by the ultimate deadline of 4<sup>th</sup> July 2012, both the Appellant and the Interested Party had satisfied all relevant criteria at and it follows that it was therefore necessary to consider the SAEF Criteria in order to determine the selection of SAEF’s nomination to SASCOC.

7.4.4. Applying the SAEF Criteria (the highest ranked available rider is nominated), the Appellant should have been nominated to SASCOC for selection.

## **8. CONCLUSION**

8.1. Based on the above, the Panel finds that the Appellant does meet the SAEF and SASCOC eligibility criteria for selection for the South African Eventing – Individual place at London 2012. He is entitled to be nominated and selected accordingly. Regrettably this means that the Appellant would replace the Interested Party. This is a necessary but unfortunate consequence of the Respondents’ failure to properly apply the selection and nomination procedures. Disappointing as it must surely be for the Interested Party to, effectively be deselected, in the view of the Panel the non-selection of the Appellant was unjust. The continued participation by the Interested Party as the RSA’s competitor in Eventing would not only have been tainted by that injustice but, more importantly, would have been both legally wrong and contrary to the spirit of sport.

## **9. COSTS**

9.1. Article R64.4 of the CAS Code provides:

*At the end of the proceedings, the Court Office shall determine the final amount of the costs of the arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS fee scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the Parties.*

Article R64.5 of the CAS Code provides:

*The arbitral award shall determine which Party shall bear the arbitration costs or in which proportion the Parties shall share them. As a general rule, the award shall grant the prevailing Party a contribution towards its legal fees and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the*

*Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the Parties.*

- 9.2. In view of the outcome of this arbitration, the costs of this procedure to be calculated and communicated to the parties by the CAS Court Office shall be borne 50% by SASCOC and 50% by SAEF.
- 9.3. With regard to the parties' costs, having taken into consideration the outcome of this arbitration, the Panel finds it appropriate and fair that the Respondents pay CHF 5,000 Swiss Francs each to the Appellant as a contribution towards the legal fees and other expenses incurred by him in connection with these arbitration proceedings.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Alexander Peternell is upheld.
2. The SAEF decision of 25 June 2012 and the SASCOC decision of 2 July 2012 are set aside.
3. Alexander Peternell meets the SAEF and SASCOC eligibility criteria for selection for the South African Eventing Team and the 2012 Olympic Games.
4. In accordance with the selection criteria published by the SAEF and SASCOC, Alexander Peternell shall be eligible for selection by SASCOC to compete on behalf of the South African team in the eventing discipline at the 2012 Olympic Games, in lieu of Paul Hart.
5. The costs of this procedure to be calculated and communicated to the parties by the CAS Court Office shall be borne 50% by SASCOC and 50% by SAEF.
6. SASCOC and SAEF shall each pay to Alexander Peternell the amount of CHF 5,000 (five thousand Swiss Francs) as a contribution towards his legal fees and other expenses.
7. All further and other claims for relief are dismissed.

Place of arbitration: Lausanne, Switzerland

Operative part of the award issued on 21 July 2012

Date: 23 July 2012

**THE COURT OF ARBITRATION FOR SPORT**

Stuart McInnes MBE  
President of the Panel

Graeme Mew  
Arbitrator

Mark Hovell  
Arbitrator

Darragh O'Sullivan  
*Ad hoc* Clerk