SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

February 5, 2024

N°: SDRCC 24-0697

JÉRÔME FEUJIO
(CLAIMANT)

AND

BOXING CANADA
(RESPONDENT)

AND

ALEXIS BARRIÈRE
(AFFECTED PARTY)

BEFORE

MICHELLE M. SIMPSON
(ARBITRATOR)

Attendees at hearing:

For the Claimant:	Jérôme Feujio Sarra Saïdi (counsel)
For the Respondent:	Christopher Lindsay

DECISION WITH REASONS

1. This is an Arbitration Final Award rendered pursuant to the Sport Dispute Resolution Centre of Canada's ("SDRCC") jurisdiction under Section 2.1 of the Canadian Sport Dispute Resolution Code (the "Code"). I was appointed as Arbitrator by the SDRCC pursuant to the Code and the parties agreed that I was to arbitrate the issues among the parties.

2. Prior to the appointment of the Arbitrator, the Affected Party was requested by the SDRCC to sign and return a Confidentiality Agreement and his Intervention form to participate in these proceedings. The Affected Party did not return a signed copy of either document to the SDRCC. After the appointment of the Arbitrator and at the Preliminary Meeting held with the parties and the Arbitrator, the SDRCC was directed by the Arbitrator to send another written communication to the Affected Party advising that if the Affected Party did not file with the SDRCC his signed Confidentiality Agreement and his Intervention Form by 4:00 p.m. (EST) on Wednesday, January 17, 2024, the arbitral process would proceed in his absence and he would be deemed to have forfeited his right to take part in these proceedings. The Affected Party did not take part in the arbitral process.

3. A Preliminary Meeting was held between the parties and the Arbitrator on January 16, 2024. At the Preliminary Meeting, the parties agreed that although most of their documents had already been submitted to the SDRCC and uploaded to the Case Management Portal, both parties sought the opportunity to make oral submissions to the Arbitrator. The parties and the Arbitrator agreed that the oral submissions would be made on January 18, 2024, commencing at 9:30 a.m. (EST). The parties and the Arbitrator agreed that submissions

could be made in English or French as all persons had the ability to comprehend both languages. If clarifications or translations were required at any time, the parties had only to ask for the same.

4. All parties recognized the urgency of these matters and noted that Boxing Canada had until January 19, 2024, to submit the name of the person to compete in Italy.

5. Each of the parties were provided an opportunity to present their written cases to the Arbitrator and on January 18, 2024, the parties were provided the opportunity to present their cases orally before the Arbitrator.

6. This case pertains to the issue of whether the criteria for team selection to the Paris Olympics should stand. Issues relating to the criteria as published by Boxing Canada include the following:

    a. Were the selection criteria fair and reasonable given the absence of any provision in the criteria for injured athletes, and
    b. The late publication of the selection criteria (circulated only in the English language). Both parties agreed that the formal publication of the criteria did not occur until December 9, 2023, and the Montreal competition concluded on December 10, 2023 - a competition which, in part, determined qualification of a representative for the Olympic Team.

Jérôme Feujio ("Mr. Feujio") seeks to have the selection criteria established for the Paris Olympic Team set aside or revised to include a provision for injured athletes or a box-off between the Affected Party, Alexis Barrière ("Mr. Barrière") and himself.

7. The following facts are not in dispute:

A. To qualify for the Olympic Team, an athlete in their relevant weight category would need to place first or second at the Pan Am Games or succeed under the WQ1 or WQ2 criteria (the latter 2 of which are set out in documents C-10 and C-03 described below).
B. Mr. Feujio did compete at the Pan Am Games. No one qualified for the Olympic Team in Mr. Feujio's weight category at the Pan-American Games.
C. Document C-03 titled Paris 2024 Olympics 1st World Qualification Tournament Athlete Selection Procedure was published on December 9, 2023, and it provided as follows:

> **6. BOXING CANADA SELECTION CRITERIA**
>
> The criteria below will select a pool of athletes who will be considered for participation at the Paris 2024 Olympics 1st World Qualification Tournament.
>
> **National Olympic Weight Team Trials, December 5-10, 2023**
>
> The athlete winning each contested weight division at the Canadian Olympic Team Trials held December 5-10, 2023, in Montreal will be selected to represent Canada at the Paris 2024 Olympics 1st World Qualification Tournament.

D. Document C-10 titled Paris 2024 Olympics 2nd World Qualification Tournament Athlete Selection Procedure was also published on December 9, 2023, and it provided as follows:

6. BOXING CANADA SELECTION CRITERIA

The criteria below will select a pool of athletes who will be considered for participation at the Paris 2024 Olympics 2nd World Qualification Tournament.

Priority 1:
A top-8 placement at the Paris 2024 Olympics 1st World Qualification Tournament

Should an athlete selected to represent Canada at the Paris 2024 Olympics 1st World Qualification Tournament obtain a final result within the top 8 (with at least one win) of their weight division, they will be selected to represent Canada at the 2nd World Qualification Tournament.

Priority 2:
Uncontested 2023 National Olympic Weight Category Results

An athlete will be selected to represent Canada at the 2nd World Qualification Tournament if they have demonstrated national dominance in their respective Olympic weight division by winning that weight class at the following two events:
1. the Pan American Games Box-off, held on June 20-23, 2023 in Montreal, Quebec and
2. the Paris 2024 Olympics 1st World Qualification Tournament Canadian Team Trials held Dec 5-10, 2023 in Montreal, Quebec.

Priority 3:
Olympic Weight Box-Off

Should any weight class have a vacant spot after applying Priority 1 and 2 above, a box-off will be held during the Calgary Cup on March 20-24, 2024, in Calgary, Alberta. The box-off will be conducted with Boxing Canada's oversight. The winner of each weight division contested will be selected to represent Canada at the 2nd World Qualification Tournament.

E. The extracts from Documents C-03 and C10 provided above are referred to in this Decision as "the selection criteria."

F. Mr. Feujio competes in the +92 kilos weight category.

G. Mr. Feujio did not compete at the 1st World Qualification Tournament Canadian Team Trials held in Montreal, Quebec on December 5-10, 2023, due to an injury; a concussion which was incurred on November 18, 2023, during an open sparring match.

H. Mr. Barrière competed at the 1st World Qualification Tournament Canadian Team Trials held in Montreal, Quebec on December 5-10, 2023 and he won in his weight division.

I. Both parties agree that should Mr. Barrière not be qualified at the next competition to be held in Italy, Mr. Barrière, Mr. Feujio, and others in their weight class will have the opportunity to be qualified for the Olympic Team by winning the Calgary box-off to be held on March 20-24, 2024.

Issue 1- Are the selection criteria fair and reasonable given the absence of any provision in the selection criteria for injured athletes?

8. Boxing Canada states that they deliberately chose not to insert into the selection criteria any provision for athlete injuries. Boxing Canada maintains that:
    a. The Selection criteria as written was intended to maintain as much access to the qualification process as possible.
    b. The intent was that there would be sufficient time between the 3 Olympic Qualification opportunities (PanAm Games, WQ1 and WQ2) that an athlete who was injured would have an opportunity to fully recover for a subsequent opportunity.
    c. No athletes were injured during the PanAm Games Qualifying opportunity thus all athletes who attended that competition had a fair opportunity to qualify; and
    d. Boxing Canada did not want to potentially have uninjured athletes required to peak their performance for trials, and for the qualifier, and then without planning or forewarning, have to interrupt their WQ1 preparation for an additional performance peak at a box-off.

9. Mr. Feujio maintains that by not providing for specific rights for injured athletes, the selection criteria negate his opportunity as an injured athlete, to qualify based on his own performance at an event. Because he was injured during the Montreal event, his opportunity to qualify is limited to one based on a vacant spot being created prior to the Calgary box-off. In other words, if all other athletes in his weight category fail to qualify then and only then does he have an opportunity to qualify. He maintains that if Mr. Barrière qualifies, Mr. Barrière should have a box-off with him to ensure the qualified athlete's dominance in the field.

10. The evidence shows and I find as fact that Mr. Feujio did have the opportunity to qualify at the Pan Am Games. Accordingly, under the selection criteria, Mr. Feujio did have an opportunity to qualify based on his own performance. His injury left him with 2 out of the 3 paths to qualify for selection.

11. The evidence shows and I find as fact that 3 boxers were injured during the relevant time. Mr. Feujio argues that the other 2 injured athletes were not recognized national athletes.

12. Boxing Canada takes the position that Mr. Feujio's assertion is a distinction without a difference and that all athletes whether recognized nationally or not should be placed on the same level playing field relative to qualification of the athlete for selection. I agree with Boxing Canada's position. Relative to selection, in this instance, injured players should be treated the same whether they are recognized nationally or not. To do otherwise would be prejudicial to those athletes who are not nationally recognized.

13. Counsel for Mr. Feujio points to Jackson Carroll and Hunter Carroll v. Taekwondo Canada (SDRCC 13-0195) and the Judith Island and Dax Adam v. Equine Canada (SDRCC 04-0008) cases.

Finding Relative to Issue 1

14. I find that in this instance, Boxing Canada's selection criteria as developed and published is fair and reasonable even though the selection criteria do not contain any specific provision to address injured athletes. Boxing Canada has provided evidence to show that in the drafting of its selection criteria, it contemplated injuries, applied logic, and laid out a process in the selection criteria which, in their view, would address injuries without having to specifically include any provision for injured athletes in the selection criteria.

Issue 2-Was the Timing of the Publication of the Selection Criteria Prejudicial to Mr. Feujio

15. Mr. Feujio points to the timing of the publication of the selection criteria as being prejudicial to him in the sense that had he known that Montreal was to be such a significant event relative to qualifying, he would not have engaged in open sparring on November 18, 2023, the date he suffered his injury.

16. Boxing Canada argues that coaches were advised via frequent Zoom meetings of the draft plan for qualifying for the Olympic Team and that the coaches should have been aware of the importance of the Montreal event relative to qualifying.

17. Based on the evidence, I find that the coach's decision to engage its athlete, Mr. Feujio in open sparring on November 18, 2023, was perhaps not a fully informed decision (because the selection criteria had yet to be published) but it was an assumed risk (the coaches knew that Montreal would be in important competition) which the coaches chose to incur. Accordingly, I find that the late publication of the selection criteria did not in and of itself, cause prejudice to Mr. Feujio.

18. In the absence of any prejudicial effect on Mr. Feujio relative to the late publication of the selection criteria by Boxing Canada, I find that the late publication of the selection criteria uniformly affected all athletes, whether injured or not, without distinction.

Finding Relative to Issue 2

19. I find that, relative to the late publication of the selection criteria by Boxing Canada, all athletes were uniformly affected by the late publication of the selection criteria and no specific or distinct prejudice was suffered by Mr. Feujio in relation to the same. Would it have been preferable for Boxing Canada to publish its selection criteria for qualifying for the Olympic Team prior to the start of the Montreal competition? Absolutely and Boxing Canada has acknowledged its failure in that regard.

Summary of Findings

20. For the reasons mentioned above, I find that Boxing Canada's selection criteria is reasonable and fair even in the absence of any provision for injured athletes. I also find that the late publication of the selection criteria (though not desirable), applied to all athletes uniformly and did not cause any unique prejudicial effect to Mr. Feujio. As a result, I find that the selection criteria, as written, stands.

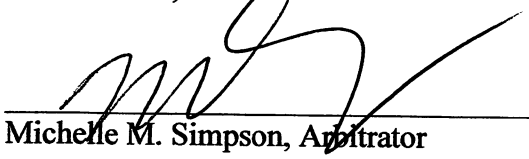
21. Although counsel for Mr. Feujio did mention lack of transparency relative to the development of the selection criteria, I failed to hear any submissions or to see any evidence to support this allegation and I therefore find no lack of transparency in relation to the development of the selection criteria.

22. Although counsel for Mr. Feujio made mention of the selection criteria having been circulated in the English language only on December 9, 2023, no arguments were advanced, and no evidence was produced to show that such publication prejudiced Mr. Feujio. Because all parties confirmed their understanding of both English and French at the Preliminary Meeting, I am inclined to assume that mention of this fact was merely a learning point for Boxing Canada.

23. Although I dismiss Mr. Feujio's application for relief in this instance, I do award him one half of his costs in the amount of $250. Had Boxing Canada published its selection criteria in a timely manner at least one of Mr. Feujio's reasons for making this application would not have been necessary.

24. I want to thank all parties for their respectful discussions and insightful submissions that were presented before this Arbitrator.

Issued this 5th day of February 2024
at Edmonton, Alberta



Michelle M. Simpson, Arbitrator