

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

No: SDRCC 23-0683

MIKKA EAVES
(CLAIMANT)

AND

SPEED SKATING CANADA
(RESPONDENT)

AND

KIERA PAGE
(AFFECTED PARTY)

Before

Aaron Ogletree
(Arbitrator)

ARBITRATION AWARD

Appearances and Attendances:

On behalf of the Claimant: Cherise Eaves (representative)
Mikka Eaves

On behalf of the Respondent: Cristy Nurse (counsel)
Marc Schryburt (representative)
Joe Morissette (representative)

PROCEDURAL HISTORY

1. This Request for Arbitration was made by Ms. Mikka Eaves (hereinafter the “Claimant”) pursuant to the Canadian Sport Dispute Resolution Code (hereinafter the “Code”) appealing the decision of Speed Skating Canada (hereinafter the “Respondent”) to not select her for the Junior World Cup Racing Pool.
2. Ms. Keira Page (hereinafter the Affected Party) requested a Bye to be part of the Respondent’s team at the Junior World Cups due to an injury that occurred in the Canadian Junior Championships on November 9, 2023.
3. The Claimant and Respondent given the urgency of this matter agreed to forgo an internal appeal and go directly to the Sport Dispute Resolution Centre of Canada.
4. On November 16, 2023, the Claimant filed her request in which she appealed the Respondent’s decision claiming that the decision “to grant a bye request for the [Affected Party and to grant her] the 5th spot on [the Respondent’s] women’s team for the upcoming Junior World Cups.” was patently unreasonable based on Section 5.1.(d) of the Respondent’s Appeals Policy.
5. On November 16, 2023, the Claimant, in her Request for Arbitration with the SDRCC, stated that:

The [C]laimant states that [the Respondent] has not properly applied its “Bye” process which allows for an athlete not to race in an event due to injury yet still be considered for team selection. The [C]laimant requests that the SDRCC rescinds the awarding of the Bye to [the Affected Party] and place her on the Canadian Junior World Cup Team.
6. On November 16, 2023, the Claimant amended her appeal of the Respondent’s decision by adding the claim that the decision was influenced by bias stating that:

I feel that Mr. [Philippe] Clement’s inclusion in the team selection discussion held in the boardroom at [Olympic] Oval is a conflict of interest and lends itself to supporting my concern around bias, as he is the coach for both Kiera Page and Courtney Charlong. Prior to this past weekend I had never met or been coached by Mr. Clement, and still have not formally been introduced to him.
7. On November 17, 2023, the Respondent filed its Answer to the Claimant’s Request seeking to maintain its decision to select the Affected Party to its Junior World Cup Racing Pool, rather than the Claimant. The Respondent answered the Claimant’s Request arguing that: 1) its decision was made in accordance with the criteria listed in the Jr World Cups & Champs” tab of the 2023-2024 Short Track High Performance Master Bulletin (hereinafter the “Bulletin”), and all other applicable policies; 2) the competitive results cited do not demonstrate that its decision was unreasonable; and 3) its decision was not influenced by bias.
8. On November 17, 2023, the SDRCC appointed me from its rotating list of arbitrators to make a determination on the Claimant’s appeal.
9. The proceedings were conducted on an expedited basis because the Respondent’s Junior World Cup Racing Pool athletes were to travel to Europe on November 21, 2023.

10. On November 17, 2023, a preliminary meeting was held in which the Claimant, the Respondent, the Affected Party and each of their representatives attended. The two issues to be arbitrated were discussed and defined. The parties agreed to the close of submissions at 12:00 PM (EST) on November 18, 2023.
11. The Affected Party did not exercise her right to intervene in the arbitration by 4:00 PM (EST) deadline on November 17, 2023.
12. On November 18, 2023, the Respondent submitted its written submissions and the Witness Statement of Mr. Marc Schryburt.
13. On November 18, 2023, an arbitration hearing was conducted by videoconference. The Claimant raised the issue for the first time of whether the Respondent violated the parameters of its Return to Play Procedure at the arbitration hearing after the close of submissions. The Respondent opposed the Claimant being allowed to raise this issue.

RELEVANT PROVISIONS

14. Section 6.11 of the Code provides, in part, as follows:
 - (a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.
15. Section 6.10 of the Code governs the Onus of Proof in Team Selection and Carding Disputes. The section states:

If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.
16. Section 5.1 of the Respondent's Appeal Policy governs the grounds for appeal stating that "[a] Decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal." The relevant sufficient grounds include that the Respondent:
 - c) Made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views); or
 - d) Made a decision that was patently unreasonable
17. The General Information tab of the Bulletin provides an overview of the principles of granting a Bye request. The relevant part of the tab states:

Principles of the Bye

An athlete may apply for a Bye to obtain a place on a Team or entry to the field of a competition in accordance with the following guidelines. A Bye provides the

opportunity to be selected to a Team for an athlete who, due to exceptional circumstances and through no fault of his/her own, is unable to qualify for the team through the normal selection competition(s) or selection process. The basic philosophy for granting a Bye is that the athlete being given the Bye has demonstrated superior performance in previous competitions.

In ordinary circumstances, SSC will not grant an athlete a bye onto a Team or into an event if that athlete has not previously satisfied the relevant and applicable criteria in order to be selected to the specific Team or in the specific event on the basis of their performances. However, and notwithstanding the aforementioned, if, compared to the performances of the other athletes seeking selection onto a Team or into an event, an athlete's recent performances demonstrate that they are at a superior level that would warrant selection onto a Team or that they should be granted permission to enter an event through a bye, the HPAC-ST may, after consulting with the relevant national team coaches, and assessing the athlete's bye request in accordance with this HP Bulletin, grant the athlete a bye for such a purpose.

All details around the following order of procedure to request a Bye can be found in the Bye Request tab:

1. Bye Eligibility (an athlete must first be eligible to request a Bye, based on the situation/event)

If an athlete is eligible to request a bye, then these steps apply:

2. Rules for requesting a Bye (appropriate time/deadline to submit the bye request)

3. Conditions for granting a Bye (HPAC-ST will follow these conditions)

4. Process for Reviewing a Bye (HPAC-ST will follow this process during the analysis)

5. SSC Appeal Policy (if applicable)

18. The Bye Requests tab governs Bye requests. It details the types of Bye requests and who is eligible to make such requests; the rules for requesting a Bye; the conditions for granting a Bye; and the process for reviewing a Bye application. The conditions for being eligible to request a Bye for the 2023-24 Junior Worlds Cups are that an athlete must have achieved a “[t]op 12 position on any distance classification at 2023 Senior Canadian Championship /or medalist at the last World Junior Championship (2023).” In addition, Section 2 states:

a) If an athlete is eligible to request a Bye (based on the tables above), then it must be submitted in writing to the High Performance Director, by following these guidelines/timelines:

[...]

- If an athlete is unable to compete because of a medical withdrawal BEFORE the respective selection event, then he/she should have *[sic]* to

submit the Bye request BEFORE the official Event Coaches Meeting of the same selection event.

- If an athlete enters and starts competing at a selection event and then gets injured (with a medical note), or broke his/her equipment during the event (written confirmation by the Event Head Official), then she/he has to submit the Bye request within 24 hours after the completion of this selection event.

b) Unless physically incapable, only the skater requesting a Bye can submit the request.

c) If the Bye request is made on the basis of an illness or injury, the skater must provide documented evidence from a sports medicine practitioner of the illness or injury. The HPAC-ST has the right to request, in which case the athlete must agree, further independent medical review after the Bye request has been submitted."

d) If the Bye request is made on the basis of equipment breakage, this must be reported to and verified by the race referee or HPAC-ST representative immediately following the race in which the equipment breakage occurred.

19. Section 3 of the Bye Request tab of the Bulletin outlines the criteria for granting a Bye request. It states that:

- a) When considering whether or not to grant a bye, the HPAC-ST must first evaluate:
 - i) Eligibility of the athlete for the position/team request
 - ii) The medical condition for the athlete.
 - iii) The degree to which the athlete has followed the prescribed rehabilitation process and medical team directives in recovery from their injury.
 - iv) The athlete's readiness to complete according to feedback received the medical team and the athlete's coach(es).
- b) The bye request may be refused on the basis of any of the points above prior to further evaluation of the athlete.

In all cases, the HPAC-ST Chair has the right to award a "Conditional Bye" to skaters recovering from injury or illness. In this situation the skater may have certain conditions imposed. The HPAC-ST should be provided confirmation (medical or other, if not a medical problem) that there is no significant physical/psychological limitation to compete. The HPAC-ST must also receive assertion from the coach that the athlete is ready to compete at the appropriate level for the competition in question.

20. Section 4 of the Bye Request tab of the Bulletin states that the process for reviewing a Bye Application is:
- a) Following the deadline for submission of a bye request, the HPAC-ST meets (in person or virtually) to review the facts.
 - b) In cases where multiple Bye applications are submitted, they will be assessed individually and on their own merit.
 - c) The HPAC-ST will establish a revised ranking of athletes pertinent to the selection in question based upon the relevant selection event(s) and the appropriate evaluation stated above.
 - d) From this revised ranking, the final selections will be made.
 - e) These final selections will then be named as the “Team” or “field of entry” and will be communicated to the skater/s requesting the Bye, skater/s directly affected by the Bye request, and the coaches.
21. The Ranking Points tab of the Bulletin describes how ranking points are assigned to results based on race distances for the purpose of ranking athletes.
22. The Selection Sequence to nominate and select athletes for the Racing Pool is governed by the Jr World Cups & Champs tab of the Bulletin. The sequence is:
1. Pre-qualified (max 2/gender): skaters who qualified for the 2023-24 Senior World Cups
 2. Winner of a distance in the 2023 Canadian Junior Championship (Distance Winners include points from both events of the same distance)
 3. Bye requests
 4. For remaining positions, the selection will be based on the final ranking of the 2023 Canadian Junior Championship (best 4 out of 6 distances)

ARGUMENTS

Claimant’s Positions

23. Following racing on November 12, 2023, a closed and locked door meeting in the Board Room was held at the Olympic Oval at the University of Calgary. The meeting participants were Mr. Marc Schryburt, Ms. Shana Jean, a high performance short track coordinator, Mr. Yannick Desmuelles, the head coach of the Junior World Cup team, Mr. Philippe Clément, both an assistant coach of the Junior World Cup team and a coach for the Canadian Regional Training Center (CRCE). They were having a meeting to discuss the team selections for the Junior World Cups. The CRCE includes skaters, such as the Affected Party. It was inappropriate to include Mr. Clément in the team selection discussion since his inclusion represents a conflict of interest and lends itself to supporting the Claimant’s assertion of bias since he is a coach for the Affected Party along with other evidence of the Claimant’s performance.
24. The Respondent’s decision was patently unreasonable. Analysis of the 2022 Canadian Junior Championships, 2023 Canada Cup 1, 2023 Canada Cup Final and the 2023 Canadian Senior Championships shows that the Claimant and Affected Party are evenly

matched. Further, there is no cause to overturn the Claimant's 5th place finish at the 2023 Junior Championship to name the Affected Party to the Junior World Cup team in the Claimant's place. The Claimant's cumulative points should be counted rather than best 4 out of 6 distances, the Claimant's finish was 4th overall.

25. In the absence of a clear leader and factoring in the Claimant's outstanding performance at the 2023 Canadian Junior Championship, there is not sufficient evidence to recommend the Affected Party over the Claimant for the Junior World Cup team.
26. In addition, when considering the performances of the Claimant and Affected Party to skaters who finished 4th and 6th ranked have consistently placed ahead of the Affected Party throughout last season and into the start of this year, a Bye request for the Affected Party would not likely have been approved. The Claimant beat both of those skaters regularly this season. The Bye should not be granted to replace the Claimant, if the Bye would not be granted to replace the 4th or 6th ranked skater.
27. The Claimant therefore requests the withdrawal of the Bye approval granted to the Affected Party and the reinstatement of her position on the team.

Respondent's Positions

28. There is no basis to find that the Decision was influenced by bias.
29. "Bias" defined in Section 5.1(c) of the Appeal Policy to mean "a lack of neutrality to such an extent that the decision-maker appears not to have considered other views."
30. Mr. Clément was invited to a portion of meetings and work done by the Internal High Performance Committee and external High-Performance Advisory Council – Short Track (HPAC-ST). However, both Junior World Cup team coaches were there in their capacity as coaches of the team to be selected, and neither participated in the ranking of athletes.
31. Coaches do not make nomination or selection decisions. Mr. Schryburt prepared a preliminary ranking for consideration by the Respondent's HPAC-ST, a committee charged with overseeing all Short Track selection processes and consisting of Mr. Schryburt, as Chair, and three additional independent members.
32. The Claimant did not allege that Mr. Schryburt or any other member of the HPAC-ST who were responsible for the decision have any direct relationship with any of the athletes concerned or are, or may reasonably be perceived to be biased.
33. To the extent that Mr. Clément learned information about the ranking of an athlete he coaches before it was made public, the exact same information was given to Ms. Elizabeth Ward, the coach of the Claimant, and to Mr. Jonathan Guillemette, the Oval Short Track Program Director, responsible for the Claimant's training club, on the same day, and before the HPAC-ST arrived at its Decision.
34. The mere presence of Mr. Clément at a meeting where Mr. Schryburt compiled ranking results consisting of objective data cannot be said to sustain a claim that the decision was influenced by bias.
35. There is no evidence that the Decision makers did not consider the inclusion of the Claimant.

36. Mr. Clément is not only a coach to the Affected Party, but he is also a coach of the Junior World team. His presence at the meeting was consistent with that role.
37. The Claimant has not challenged that the Respondent's selection criteria were appropriately established and that the Respondent's decision was made in accordance with that criteria.
38. If the Respondent shows that its decision was made pursuant to applicable selection criteria, then based on the Respondent's Appeal Policy and pursuant to Article 6.10 of the Code, the burden shifts to the Claimant to demonstrate why she should have been selected for the Junior World Cup Racing Pool pursuant to the criteria. The Claimant's arguments in her submissions did not demonstrate why she should have been selected for the Racing Pool.
39. The Decision was consistent with the applicable selection criteria in the Bulletin.
40. The Claimant did not allege that the Affected Party was not eligible for a Bye.
41. The Claimant did not argue that the points assigned for the best 4 out of 6 distance results are inaccurate.
42. The Affected Party finished ahead of or achieved an overall ranking superior to the Claimant on 26 occasions in 2022 and 2023 compared to the Claimant finishing ahead of the Affected Party on 10 occasions and never had a higher overall ranking.
43. The Claimant argues if cumulative points are used, rather than the best 4 out of 6 distances, her ranking would have been 4th overall. This is inconsistent with the criteria in the Bulletin. The Bulletin states that an athlete who is not pre-qualified, does not win a distance, and is not eligible for a Bye will be considered based on their best 4 out of 6 distances.
44. The Claimant argues if the Respondent considered the results of Courtney Charlong and Oceane Guerard, that the Affected Party's Bye request would not have been granted. However, considering the performances of these skaters would not have changed the outcome. In fact, the analysis starts with the last pre-Bye nominated position, then move up the list if the comparative results show clear advantage.
45. The Claimant is applying final finish times, rather than final distance rankings in races. However, the Bulletin shows that the Respondent does not use times in nomination and selection decisions. This is because of the nature of short track speed skating, and the difficulty in accurately comparing different races to one another, including the fact that a skater progresses by placing in top positions of their heat regardless of time. Moreover, there are strategies of saving energy for the next race and there are circumstances beyond a skater's control, such as when another athlete falls.
46. The Affected Party's Bye Request was considered in the context of all athletes ranked in the top five and whose spots were not secured in accordance with priorities one or two in the Selection Sequence.
47. The Claimant's times show she is competitive with or faster than the Affected Party. This amounts to the application of data that is not only outside the Criteria, but also, if applied, would arguably result in the Respondent being in breach of its own criteria. In fact, times are never considered an appropriate metric for nominating and selecting teams

because of the nature of the sport and the variation between different races that prevents a fair direct comparison. Times are only used in Short Track for seeding purposes in an event and are not used in final rankings.

48. The absence of any reference to times in the applicable criteria, and the specific use of finish placements in the other priorities included in the Selection Sequence, demonstrates that the HPAC-ST's reliance on such placements to assess the Bye request was both fair and reasonable.
49. The Affected Party finished ahead of or achieved an overall ranking superior to the Claimant on 26 occasions in 2022 and 2023, while the Claimant finished ahead of the Affected Party on 10 occasions. Moreover, the Affected Party finished higher than the Claimant in all 6 races at the 2023 Canadian Senior Championships, and she achieved an overall ranking of 16th as opposed to the Claimant's ranking of 29th.
50. There is no basis to find that the decision was unreasonable.

SUMMARY OF EVIDENCE

51. The Claimant is a short track speed skater at the junior level competing in Canadian races, such as the Canadian Junior Championships and Canada Cups races.
52. The Respondent is the National Sport Organization governing speed skating in Canada.
53. The Affected Party suffered an injury when she was brought down by another skater during her first race, a heat of the 1500m event in the Canadian Junior Championships that occurred on November 9, 2023 which led her to request a Bye to be part of the Respondent's team at the Junior World Cups. She was not able to compete further due to a concussion sustained in the event.
54. The Affected Party submitted a Bye request explaining her inability to compete at the Championships and showing that she was progressing through a concussion protocol under the supervision of a physiotherapist from the CRCE and Dr. Luc DeGarie, an INS – Quebec Sport Physician and Team Canada Doctor.
55. The Affected Party stated and a medical certificate from Dr. DeGarie confirmed she was in post-concussion protocol and expected to return to training by November 17, 2023.
56. On November 12, 2023, after the completion of the top bracket of the Championships, Mr. Marc Schryburt and Ms. Shana Jean prepared a Bye Analysis. The Junior World Cup team head coach, Mr. Yannick Desmuelles, and its assistant coach, Mr. Phillippe Clément, were present during the Bye Analysis, but neither participated in producing the rankings and have no authority to alter rankings or the draft nominations. The results of the rankings are tabulated by Competitor Stewarts and Internal High Performance Representatives.
57. Mr. Schryburt in the Bye Analysis compiled a comparison of the final distance rankings between the Affected Party and the three athletes who were ranked 3rd to 5th, including the Claimant, based on their best four out of six finishes at the Championships. When this Analysis was applied, the Affected Party surpassed the Claimant for the 5th ranking.

58. Mr. Schryburt after completing the drafting rankings met with and presented the draft team nomination to Mr. Clément, the Affected Party's coach, and Ms. Elizabeth Ward, a Claimant's coach.
59. On November 16, 2023, the Respondent received confirmation that the medical conditions for approval of the Affected Party's Bye request had been met, so she was confirmed to the provisional team.
60. On November 16, 2023, the Claimant informed the Respondent that she would appeal the decision.

DECISION

61. The validity of the Claimant's claim that the Arbitrator should substitute his decision for the Respondent's decision depends upon the validity of the Claimant's: a) procedural challenge alleging bias of the Respondent; and b) substantive challenge that the Respondent's decision is unreasonable.

A. Procedural Challenges to the Respondent's Decision

62. The determination of whether the Arbitrator should substitute his decision to that of the Respondent depends on the validity of the Claimant's procedural challenge. The Claimant's procedural challenge is that the decision of the Respondent was influenced by bias.

i. Is the Respondent's Decision Influenced by Bias

63. The Claimant argues that the Respondent's decision is biased because of the fact that a coach for the Affected Party, Mr. Philippe Clément, was included in team selection discussions for the Junior World Cups yielded a conflict interest. Further, this meeting occurred behind closed doors. This meeting occurred without Ms. Elizabeth Ward, head coach of the Oval's Short Track program, and Mr. Dustin Miller, Olympic Oval Competition Coordinator, being present.
64. It is undisputed that Mr. Clément was present at the meeting where team nominations were discussed and made. Further, Mr. Clément may have had an interest in having a skater that he coaches on the team. However, there is no evidence that Mr. Clément advocated for or shared his views at the meeting. In fact, there is no evidence that he did more than being present and observing the meeting which he is permitted to do in his role as an assistant coach for the Junior World Cup team. In addition, HPAC-ST, and not he, made the selection decision. Moreover, the HPAC-ST used the objective data of skaters' race results pursuant to the criteria in the Bulletin to make its decision. Mr. Clément did no more than learn the same information about the ranking of skaters before the Claimant's coach did. Therefore, the Claimant failed to show that the Respondent's decision is biased, pursuant to Section 5.1(c) of the Appeal Policy.

B. Substantive Challenges to the Respondent's Decision

65. The determination of whether the arbitrator should substitute his decision for the decision of the Respondent depends on the validity of the Claimant's substantive challenge. The Claimant's substantive challenge is that the decision of the Respondent is patently unreasonable.
66. The Claimant's procedural challenges are that the Respondent's Decision is unreasonable because of: i) the Claimant's and the Affected Party's Performances; ii) the Claimant's and the Affected Party's Performances in relation to other skaters; and iii) the Respondent's failure to comply with the terms of its Return to Play Procedure.

Standard of Review

67. The standard of review of decisions of national sport organizations is that of reasonableness. (see *Palmer v. Athletics Canada* (SDRCC 08-0080), *Boisvert-Lacroix and Graham v. Speeding Skating Canada* (21-0523/24), *St-Jules v. Speed Skating Canada* (SDRCC 16-0288)). The Tribunal has repeatedly exercised deference for selection decisions by national sport organizations because of their expertise and provided that the organization followed its own rules. (see, for example, *Hay v. Canadian Fencing Federation* (SDRCC 22-0565), *Bastille v. Speed Skating Canada* (SDRCC 13-0209)). A decision is reasonable when it falls within a range of possible, acceptance outcomes which can be regarded as defensible in respect of the facts and law (see *St-Jules v. Speed Skating Canada* (SDRCC 16-0288), *Fergusson v. Equestrian Canada* (SDRCC 22-0598), *Hay v. Canadian Fencing Federation* (SDRCC 22-0565)). In *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019 SCC 65), the Supreme Court of Canada clarified the reasonableness standard of review stating that the outcome of the decision must consider based upon the reasons given to ensure that the decision is transparent, intelligent and justified.

I) Is the Respondent's Decision Unreasonable based on the Claimant's and the Affected Party's Performances?

68. The Claimant claims that the Respondent's decision is unreasonable. According to the Claimant, her finish is 4th overall when using cumulative points rather than the best 4 out of 6 distances. In addition, she had faster finish times in competition, than did the Affected Party in the 2022 Canadian Junior Championships, 2023 Canada Cup 1, 2023 Canada Cup Final and the 2023 Canadian Senior Championships. Moreover, her personal best is a faster finish time than the Affected Party. Further, she states that they are "evenly matched" skaters.
69. The Respondent claims that times are not considered an appropriate metric for nominating and selecting teams because of the nature of the sport and the variation between races that prevents a fair direct comparison. Times are only used in Short Track for seeding purposes in an event, but they are not used in the determination of final rankings.

70. It is undisputed that the Claimant is an elite skater. However, the Respondent established its criteria for Junior World Cup team and the results of faster finish times and cumulative points are not part of the criteria. In fact, if the Respondent used the results to select her, then it would be in violation of its own selection criteria. The decision to not select the Claimant was made in accordance with the Bulletin. The Claimant did not allege that the Respondent's selection policy, on which the Respondent based its decision-making process, was not provided, was vague, arbitrary, unknown, partial, or unfair. The Claimant did not claim or show that the selection criteria were established improperly, failed to follow its own procedures, nor that it made a decision that it did not have the authority or jurisdiction to do so.

II) Is the Respondent's Decision Unreasonable based on the Claimant's and the Affected Party's Performances in relation other skaters?

71. The Claimant claims that the Respondent's decision is unreasonable because the Affected Party's Bye request would not have been granted in relation to the results of the 4th ranked skater, Ms. Courtney Charlong, and the 6th ranked skater, Ms. Océane Guérard. Therefore, the Bye Request should not be granted to replace the Claimant. The Claimant added that Ms. Guérard was ahead of the Affected Party in qualifying for a NextGen spot for 2023/2024 and Ms. Charlong consistently placed ahead of the Affected Party throughout last season and into this year.

72. The Claimant's claim is inconsistent with the criteria for the Respondent granting a Bye request provided Sections 2, 3 and 4 of Bye Tab of the Bulletin and Selection Sequence criteria listed in the Jr World Cups & Champs Tab of Bulletin. The Affected Party was compared to skaters, Ms. Aaralyn McGill, Ms. Courtney Charlong and the Claimant, ranked in the top 5 before the Bye request, excluding the top 2 skaters who were prequalified. This analysis does not include the 6th ranked skater. Instead, the Respondent's analysis started with the 5th ranked skater, then moved up the list to determine the final ranking of the skater requesting the Bye Request. In doing so, the Respondent complied with its own policies and process which are objective, reasonable and unambiguous.

III) Is the Respondent's Decision Unreasonable based on the Respondent's Return to Play Procedure?

73. The Claimant claims that the Respondent failed to comply with the parameters of its Return to Play Procedure. The Claimant raised this issue for the first time at the arbitration hearing. The Claimant stated that this was based on the Respondent's submissions regarding the Affected Party's medical status. The Claimant opposed the medical evidence that the Respondent relied on in reaching its Decision based on her lay opinion. The Respondent opposed reopening of submissions and raising of this issue. The Parties participated in a preliminary meeting in which they agreed to the issues to arbitrate and a deadline for the close of submissions. Moreover, the Parties agreed that discovery was not an issue. The Claimant failed to raise this issue before the close of

submissions or during the preliminary meeting in which the parties agreed to the issues for arbitration. Further, the Respondent did not consent to the reopening of submissions. In additional, the Claimant raised this new issue concerning the Affected Party's medical status after the deadline for the Affected Party to intervene had passed.

AWARD

74. The Arbitrator does not find the Claimant's procedural and substantive claims compelling in order to justify the Arbitrator substituting his decision for the Respondent's decision. Against that background and in the exercise of my discretion, I dismiss the Claimant's claims.

Signed in Detroit, this 4th of December, 2023.



Aaron Ogletree
Arbitrator