Tribunal Arbitral du Sport
Court of Arbitration for Sport

COURT OF ARBITRATION FOR SPORT (CAS)
Ad hoc Division – Games of the XXXI Olympiad in Rio de Janeiro

CAS OG 16/20 VANASOC & Vanuatu Beach Volleyball Federation v. FIVB & Rio 2016 Organizing Committee

AWARD

in the arbitration between

1/ Vanuatu Association of Sports and National Olympic Committee (VANASOC)
2/ Vanuatu Beach Volleyball Association

("Applicants")

and

1/ Fédération Internationale de Volleyball (FIVB)
2/ Rio 2016 Organizing Committee

("Respondents")

and

1/ International Olympic Committee (IOC)
2/ Comitato Olimpico Nazionale Italiano (CONI)
3/ Laura Giombini
4/ Marta Menegatti

("Interested Parties")

1. PARTIES AND FACTS

1.1 The Applicants are the Vanuatu Association of Sports and National Olympic Committee (VANASOC) and the Vanuatu Beach Volleyball Association.

1.2 The Respondents are the Fédération Internationale de Volleyball (FIVB) and the Rio 2016 Organizing Committee.

1.3 The facts of the case being very limited, they shall be presented with the legal reasoning linked to them in the merits section of this award.

2 CAS PROCEEDINGS

2.1 The CAS Ad Hoc Division received the Applicant's application on 5 August 2016 at 8:30 am (time of Rio de Janeiro).

2.2 The Application was filed with the CAS as a matter of extreme urgency, on the basis that a decision was sought by 12 noon the same day.

2.3 The time restraint was said to be necessary to enable the athletes to fly from Vanuatu to Rio de Janeiro to compete on 6 August 2016.

2.4 The Applicants state that they also seek to have the Respondents reorganise the schedule of the Women Beach Volleyball competitions to provide the Vanuatu team some time to prepare for the games.

3 PARTIES' SUBMISSIONS

a. *Applicant's Submissions and Requests for Relief*

3.1 The Applicant's requests for relief are as follows:

a. *"set aside, annul and invalidate the 4 August 2016 decision of the FIVB and Rio 2016 Organizing Committee which accepted the replacement of Ms. Viktoria Orsi Toth by Ms. Laura Giombini;*

b. *exclude and withdraw the entire Italian team from female beach volleyball competition due to the exclusion of Ms. Viktoria Orsi Toth by doping;*

c. *declare that the Vanuatu team (Ms. Miller Patta and Ms. Linline Matautu) is entitled to compete in the Women Beach Volleyball at the Rio 2016 Olympic Games".*

b. *Respondent's Submissions and Requests for Relief*

3.2 Due to the time constraint, the Respondents were granted until 5 August 2016 at 10.30 am (time of Rio de Janeiro) to file their replies to the Applicants' application, if they

deem necessary. The Respondents did not file any reply within the above-mentioned deadline.

c. *Interested Parties' Submissions and Requests for Relief*

3.3 The Interested Parties were granted the same deadline to file an *amicus curiae* brief, if they deem necessary. The Interested Parties did not file such within the above-mentioned deadline.

4 JURISDICTION AND ADMISSIBILITY

4.1 Article 61.2 of the Olympic Charter provides as follows:

"*61 Dispute Resolution*
[...]
2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

4.2 In the view of the above, the Sole Arbitrator considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter.

4.3 In addition to the above provision, Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter referred to as the "CAS Ad Hoc Rules") provides as follows:

"*Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)*

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 *of the Olympic Charter,* ***insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games****.*

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective" (emphasis added).

4.4 As the appealed decision of the FIVB to accept the replacement of Ms. Viktoria Orsi Toth by Ms. Laura Giombini was taken on 4 August 2016, the Sole Arbitrator finds that there is no issue of admissibility of the application as the dispute arose within the time limit of ten days prior to the Opening Ceremony of the Games of the XXXI Olympiad in Rio de Janeiro.

5 MERITS

5.1 The following is a summary of the relevant facts, as asserted and as set out in the Application.

- On 19 July 2016, the Italian athlete Viktoria Orsi was tested positive for Clostebol, an anabolic substance.
- *"Finally"* she was excluded from the Olympic Games.
- In Beach Volleyball, a sport team played by two players, the two individuals act as a single unit.
- For example, by Rule 19 of the Olympic Beach Volleyball Tournament Specific Competition Regulation, joint liability is imposed on both members of the team if one member denies testing for anti-doping and the team is disqualified.
- Pursuant to item 10 (entries and team information) of the Olympic Beach Volleyball Tournament Specific Competition Regulation, the replacement of an athlete *"will only occur where there are urgent medical conditions preventing participation of an Athlete, or otherwise on a case-by-case basis for exceptional circumstances"*.
- Use of an anabolic substance cannot fulfil either condition.
- Even if doping is deemed to be an exceptional circumstance to enable a replacement, such replacement has not been timely in the present case, as Ms Toth was *"banned after the preliminary inquiry"*.

5.2 As to the last assertion, the Applicant also provided the media release in respect of Ms Toth. In that release, it was stated that on first testing on Tuesday 2 August 2016, Ms Toth was *"suspended as a precautionary measure"* before testing positively in a second screening Wednesday morning 3 August 2016.

5.3 The evidence in respect of the decision by FIVB to allow the Italian team to replace Ms Toth is scant. By letter of 4 August 2016, the FIVB General Director informed the President of the Vanuatu Volleyball as follows:

"[…] The FIVB has become aware that the Comitato Olimpico Naziole Italiano has replaced Ms. Viktoria Orsi Toth with Ms. Laura Giombini, who has been approved the the Rio Organizing Committee in accordance with the Late Player Replacement Policy for the 2016 Rio Olympic Games. Therefore, a re-allocation of CONI's quota place is not necessary because the Italian beach volleyball team will be competing at the 2016 Rio Olympic Games" (emphasis added).

5.4 This letter refers to the *Late Player Replacement Policy for the 2016 Rio Olympic Games*. That policy relevantly provides as follows:

"From 19 July 2016 00:00 Rio de Janeiro time (GMT-4) the Rio 2016 Organising Committee for the Olympic Games (Rio 2016) may authorise a permanent replacement of an Athlete by another Athlete in the same sport, discipline and event. Each decision will be made after consultation with the relevant International Federation (IF), and its respective Medical expert and, when deemed appropriate, the International Olympic Committee (IOC). Such replacement will only occur where there are urgent medical conditions preventing participation of an Athlete, or otherwise on a case-by-case basis for exceptional circumstances.

Late Athlete Replacement is possible only provided that:

- *The replacement Athlete meets the eligibility conditions and qualification criteria to take part in the Rio 2016 Olympic Games, as stipulated in the "Qualification Systems – Games of the XXXI Olympiad – Rio de Janeiro 2016" per sport/disciplines published in 2014, and regularly updated by the IOC;*

- *The NOC of the replacement Athlete had applied successfully for accreditation for the Athlete prior to 29 April 2016 (accreditation application deadline). As such, the replacement Athlete has been registered by Rio 2016 in the "NOC's Athlete Accreditation Long List"; and*

- *No doping control issues are pending concerning the replacement Athlete"*

(emphasis added).

5.5 Thus, the Policy provides for a discretion on the part of the Rio 2016 Organising Committee for the Olympic Games (Rio 2016) to authorise a replacement on a case - by-case basis for exceptional circumstances. The letter states that the replacement was authorised under this Policy. It cannot be said, for example, that the FIVB ignored the Policy, nor has it been suggested that it was unaware of its contents.

5.6 As has been noted, there has been no response from the Respondents. It is unfortunate that the Respondents did not provide a reply within the time frame imposed by the Applicants and the imminent commencement of the competition.

5.7 However, the Applicant bears the onus of proof to establish that the Policy was not complied with. This would involve establishing that the discretion miscarried or that there were no exceptional circumstances.

5.8 The Panel cannot conclude that the Applicant has satisfied this onus of proof. The facts are not sufficient to establish an inevitable conclusion of lack of exceptional circumstances. For example, the Panel notes the chronology as set forth in the Application and observes that it has not been shown that surrounding circumstances did not constitute or amount to exceptional circumstances.

5.9 It follows that the Application should be refused.

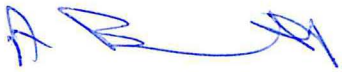
DECISION

The Ad Hoc Division of the Court of Arbitration for Sport rules that:

1. The application filed by the Vanuatu Association of Sports and National Olympic Committee (VANASOC) and the Vanuatu Beach Volleyball Association on 5 August 2016 is dismissed.

Operative part notified on 5 August 2016
Rio de Janeiro, 5 August 2016

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT



Annabelle Bennett
Sole Arbitrator