



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

COURT OF ARBITRATION FOR SPORT (CAS)

Ad Hoc Division – Games of the XXXIII Olympiad in Paris

CAS OG 24/13 Dany Brand v. World Athletics

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Denmark

AWARD

in the arbitration between

Dany Brand

("Applicant")

v.

World Athletics

("Respondent")

and

International Olympic Committee

("Interested Party")

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

I. PARTIES

1. Mr Dany Brand (the “Applicant” or the “Athlete”) is a Swiss athlete specialising in the men’s 400 m hurdles.
2. The Respondent is World Athletics (“WA”).
3. The Interested Party is the International Olympic Committee (the “IOC”).

II. FACTS

A. Background Facts

4. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
5. On 20 December 2022, WA published its qualification system for the Paris Olympic Games, named the Qualification System – Games of the XXXIII Olympiad – Paris 2024 – World Athletics – Athletics (the “OQS”). According to the OQS, 40 entries were provided for in the men’s 400 m hurdles.
6. The OQS for the 400 m hurdles determines that qualification can be achieved either by meeting an entry standard (time) or, if not all quota places are filled by athletes meeting such entry standard, by allocation on the basis of the World Athletics World Rankings within the ranking period.
7. On 2 July 2024, the list of entries was published by World Athletics. 37 athletes had met the entry standard, and an additional three athletes – nos. 38-40 on the World Athletics World ranking – were added to the list of qualified athletes. The Athlete was no. 41 on the “Road to Paris” list and therefore the first athlete to miss the final entry list. The National Federations/National Olympic Committees were given a deadline of 4 July 2024 to decline quotas. No quota was declined in the men’s 400 m hurdles.
8. On 6 July 2024, Swiss Athletics (“SA”) wrote to WA, quoting an email from the Athlete pointing out that, although no quota had been declined, a French athlete (Mr Ludvy Vaillant) and a Brazilian athlete (Mr Matheus Lima) were likely not to compete due to injuries, and that he should be entered, in case there was an unused place in the target number of entries for the men’s 400 m hurdles.
9. On 7 July 2024, WA published the final list of all qualified athletes eligible for the final entry and the NOCs subsequently entered all the 40 qualified athletes.
10. By email of 8 July 2024, WA advised SA that it had contacted the French and Brazilian national federations, which had confirmed that their athletes were ready to compete. WA confirmed that it had done everything that it could, and that there was nothing more which could be done at that point.

TRIBUNAL ARBITRAL DU SPORT
 COURT OF ARBITRATION FOR SPORT
 TRIBUNAL ARBITRAL DEL DEPORTE

11. The French athlete Mr Vaillant was entered by the French NOC on the internal condition that he would pass a “competitiveness test” by 21 July 2024 set by the French Athletic Federation because he was recovering from an injury. Mr Vaillant failed such test and was therefore withdrawn from the entry list on 22 July 2024.
12. On 27 July 2024, and based on the fact that only 39 of the 40 quota places were filled, SA asked WA to review the situation of the Athlete, claiming that the entry of Mr Vaillant was “invalid” because it breached Rule 44, para. 5, of the Olympic Charter, and requested a review of the entry by the IOC Executive Board under this provision. The request read, *inter alia*, as follows: “For these reasons, we request a review of Ludvy Vaillant’s case by the IOC Executive Board through our IF (World Athletics) as it is foreseen in the Rule 44, paragraph 5 of the Olympic Charter. Ludvy Vaillant was not adequately prepared for the Paris 2024 Olympic Games and Dany Brand shall receive this quota place as next eligible athlete. To organize an accommodation for Dany Brand wouldn’t be a problem for us.”
13. By letter of 28 July 2024 (the “Appealed Decision”), WA answered SA as follows:

“Thank you for your letter dated 27 July 2024. Let me try and help explain the position.

Each Member Federation is entitled to make its own selection decisions from the “Road to Paris” list from World Athletics. You may disagree with the decision of the French Athletics Federation and the French NOC in relation to the selection and subsequent de-selection of Ludvy Vaillant but those decisions are a matter for the French Athletics Federation and the French NOC. The French Athletics Federation was entitled to select Ludvy Vaillant based on the qualification criteria. Whether they should or should not have done so is not a matter for World Athletics.

I suggest your NOC contacts the IOC direct if you have any further concerns or queries.”
14. Finally, on 29 July, Swiss Olympic contacted the IOC to inquire about SA’s request under Rule 44, para. 5, of the Olympic Charter, and reminders were sent on 31 July 2024 and on 1 August 2024 without any reply from the IOC.

III. THE CAS PROCEEDINGS

15. On 2 August 2024 at 14:00 (Paris time), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondent with respect to the Appealed Decision.
16. On 2 August 2024 at 15:07 (Paris time), the CAS Ad Hoc Division notified the Application to the Respondent and the Interested Party. The Parties were also requested to indicate whether they deemed a hearing necessary.
17. Also on 2 August 2024 at 16:39 (Paris time), the CAS Ad Hoc Division notified the Parties of the composition of the Arbitral Tribunal:

Sole Arbitrator: Mr Lars Hilliger, Denmark

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

18. On 2 August 2024 at 16:56, the CAS Ad Hoc Division issued the Procedural Directions and invited the Respondent to file its Answer and the Interested Party to file its *amicus curiae*, if any, by 3 August 2024 at 10:00 (Paris time).
19. On 3 August 2024 at 09:42, the IOC informed that it would not file any comment with respect to the dispute.
20. On 3 August 2024, at 10:00, WA filed its reply.
21. The Parties also confirmed that they did not consider a hearing necessary in this matter.
22. By email of 3 August 2024, the Parties were informed that the Sole Arbitrator considered himself sufficiently well informed with the written submissions filed by the Parties. Therefore, the Sole Arbitrator had decided not to hold a hearing, pursuant to Article 15 of the CAS Arbitration Rules for the Olympic Games (the "CAS Ad Hoc Rules").

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

23. The Parties' submissions and arguments shall only be referred to in the sections below only if and when necessary, even though all such submissions and arguments have been considered.

A. The Applicant

a. Applicant's Submissions

24. The Applicant's submissions may be summarize in essence, as follows:
 - According to Rule 44, para. 5, of the Olympic Charter, the NOCs shall send to the Olympic Games only those competitors adequately prepared for high-level international competition. This requirement must be met at the time when an athlete is entered for the Olympic Games by its NOC, respectively, there must be sufficient certainty that the condition is fulfilled at the time of the actual competition.
 - The Athlete appreciates that the French NOC, when entering Mr Vaillant, had reason to assume that he would be sufficiently prepared for and ready to compete at the Olympic Games in Paris.
 - The Athlete also appreciates that the French NOC withdrew the entry of Mr Vaillant as soon as it became apparent that he was not "*adequately prepared for a high-level international competition*".
 - However, in retrospect, Mr Vaillant did not meet the requirements set out in Rule 40, para. 5, of the Olympic Charter at the time he was entered in the Olympic Games by the French IOC, which is why such entry is to be considered invalid.
 - Instead of Mr Vaillant, the Athlete, being no. 41 of the World Ranking, should have been accepted as an entry for the Olympic Games, completing the field of 40 competitors according to the quota set.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

- By filling the quota, no other person would be at a disadvantage.
- Such reallocation of places has also been done by other IFs, e.g. by the IF for Wrestling as late as 29 July 2024.
- By allocating an empty spot to another competitor, fair play and equal competition are ensured because as all competitors in the men's 400 m hurdles will then be racing against the same number of competitors.
- Preventing the allocation of an empty spot by referring to deadlines in the qualification system must be seen as excessive formalism in the present case.
- From a procedural point, and according to Rule 40, para. 5, of the Olympic Charter, a national federation may, through its IF, may ask the IOC Executive Board to review a decision of an NOC in a matter about entries.
- The SA did request such review in its letter of 27 July 2024. However, the WA did not respond to this request at all in the Appealed Decision and only advised the SA to have the Swiss NOC address the matter directly with the IOC, referring to any provision that this might be based on.
- Thus, all internal remedies are considered exhausted, and in the alternative, any further delay would make this appeal to the CAS Ad Hoc Division ineffective, as the men's 400 m hurdles competition starts on 5 August 2024, at 10h05 (Paris time).

b. Applicant's Requests for Relief

The Applicant requests that "*Mr Dany Brand is to be declared eligible to compete in the Men's 400m hurdles at the 2024 Olympic Games in Paris.*"

B. The Respondent

a. Respondent's Submissions

25. The Respondent's submissions may be summarized, in essence, as follows:

- The Athlete's Application is based on the argument that the entry made by the French NOC on 8 July 2024 is "*invalid*" because Mr Vaillant was not "*adequately prepared for a high-level international competition*" under Rule 44, para. 5, of the Olympic Charter, and the Athlete claims that WA should have referred the matter to the IOC Executive Board for review.
- It is not disputed that, under the said rule, it is through international federations that requests for review are formulated with respect to NOC decisions on entries.
- However, it is obvious that the IOC Executive Board cannot be troubled with every single complaint that any national federation may have in this respect. There is an element of discretion on the part of the international federation, barring which the IOC Executive Board would be flooded with requests.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

- In this instance, WA did not forward SA's request to the IOC Executive Board for review. It did so rightly, because it recognised that matters about entries fall within the discretion of NOCs (under Rule 44 of the Olympic Charter), and only in circumstances with clear abuse should the matter be submitted for review.
- In this case, there was nothing unreasonable about the French NOC's decision to enter Mr Vaillant and to give him a chance to prove that he was adequately prepared to compete. That question must be left at the discretion of an NOC and can only be reviewed in case of arbitrariness or unreasonableness.
- Furthermore, the Athlete also failed to include the French NOC as a respondent. In such case, the French NOC's decision to include Mr Vaillant on the list cannot be reviewed. For that reason alone, this case should fail.
- In any event, and even if the Sole Arbitrator were to agree with the Athlete that the matter should have been submitted to the IOC Executive Committee through WA, it remains at the IOC Executive Committee's sole discretion whether to act on the query (and that discretion is marked as "final").
- Therefore, the requests for relief as presented by the Application cannot be met because it would require the Panel to substitute itself to the discretion of the IOC Executive Board, which is not possible.
- It must be further emphasised that athletes do not have a right to participate in the Olympic Games. The right to enter an athlete (or not) lies with the NOCs. The Athlete therefore cannot avail himself of a breach of a right in circumstances where he is not entitled to be entered in the Olympic Games. This is all the more true in circumstances where the Athlete was no. 41 on the list and therefore not eligible for entry.
- In that context, WA recalls that, once the deadline for entry had expired, the IOC Late Athlete Replacement Policy became applicable, and it is only within this framework that reallocation of quota places is possible. However, this policy makes it clear that it is "*only applicable for those sports/disciplines where the quota place has been allocated to the NOC and not to an athlete by name*". Under the OQS, "[q]uota places are allocated to the athlete(s) by name in individual events". In this case, the Late Athlete Replacement is only possible for replacement of an athlete by another athlete in the same sport, discipline, event and NOC. Further, a Late Athlete Replacement is only available until 30 July 2024 to the respective NOCs. It follows that the IOC Late Athlete Replacement Policy is of no avail to the Athlete.
- It is therefore clear that the Athlete has no right to be entered, and no basis for his claim. WA was correct to respect the NOC's discretion, and there is no basis for late reallocation in athletics events under the IOC rules and regulations. It is also unclear on what basis the Athlete has standing to claim for reallocation, when matters of quota places are reserved for NOCs.
- WA accepts that the situation is unfortunate for the Athlete. However, WA is bound by the overall applicable framework governing the total number of quota places of 1810 for the athletics programme at the Olympic Games and must respect the discretion afforded to NOCs to enter athletes (barring which the system would be in constant insecurity). In WA's submission, the French NOC was correct to give Mr Vaillant a chance to prove his

TRIBUNAL ARBITRAL DU SPORT
 COURT OF ARBITRATION FOR SPORT
 TRIBUNAL ARBITRAL DEL DEPORTE

worth, in circumstances where he had met the qualification standard and therefore had earned his spot by being within the target number of athletes for the men's 400 m hurdles at the Olympic Games (ahead of the Athlete). It would rather have been a concern if the NOC had decided not to enter Mr Vaillant on account of speculations, which no doubt would have resulted in litigation as well. There is nothing arbitrary or unreasonable about the NOC's decision.

- Further, WA is bound by the IOC's rules in respect of late reallocation, which do not allow the reallocation requested by the Athlete. It is fundamental, and an obvious matter of policy, that the applicable framework is strictly enforced. This is also crucial to ensure that athletes are treated equally and fairly. This is what WA did in this case.
- In the end, it is for the Athlete to identify a right supporting his claim, and except for general considerations of fairness, he has failed to do so. In these circumstances, the Application must be dismissed.

b. Respondent's Requests for Relief

WA requests the Sole Arbitrator to rule as follows: *"The CAS does not have jurisdiction over the present appeal, or alternatively, the appeal filed by Dany Brand is inadmissible or dismissed."*

C. The Interested Party

26. The Interested Party submits that *"The decision challenged [...] is not a decision of the IOC. The Application is directed at WA as the Respondent. In light of the above, the IOC does not deem it necessary to file an amicus brief."*

V. JURISDICTION AND ADMISSIBILITY

27. Rule 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".

28. Article 1 of 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.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

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.”

29. Article 1 of the CAS Ad Rules provides that the relevant dispute must **arise** during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games (emphasis added).
30. The Opening Ceremony for the Paris Olympic Games is 26 July 2024.
31. The Respondent has specifically raised the question of jurisdiction, submitting that the dispute is not covered by Article 1 of the CAS Ad Hoc Rules as the dispute between WA and the Athlete/his national federation in relation to the entry of Mr Vaillant arose already between 6 and 8 July 2024 and thus did not arise during the relevant 10-day period prior to the Opening Ceremony. Furthermore, it is submitted that the NOC’s decision to enter Mr Vaillant does not fall within the jurisdiction of the CAS Ad Hoc Division.
32. Moreover, the Respondent submits that, since the Athlete failed to raise his procedural argument immediately and instead waited more than two weeks before challenging the decision of the French NOC, this appeal is to be considered inadmissible.
33. The Sole Arbitrator, however, does not endorse the Respondent’s submissions ad paras. 31 and 32.
34. The relevant date with regard to Article 1 of the CAS Ad Hoc Rules is when the dispute between the Athlete and the Respondent arose, which the Sole Arbitrator finds to be 28 July 2024 when the Respondent forwarded the Appealed Decision to the Athlete, thus indirectly informing the Athlete of its omission to forward the request for review to the IOC Executive Board pursuant to Rule 44, para 5, of the Olympic Charter.
35. The Sole Arbitrator notes that the Respondent did not dispute that the Appealed Decision does in fact constitute an appealable decision, which is why the Sole Arbitrator does not see any need to deal with this issue in the present award.
36. Based on the above, the Sole Arbitrator concludes that the CAS Ad Hoc Division for the Olympic Games has jurisdiction in this case and that the appeal is admissible.

VI. APPLICABLE LAW

37. Under Article 17 of the CAS Ad Hoc Rules, the Panel must decide the dispute *“pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate.”*
38. The Sole Arbitrator notes that the *“applicable regulations”* in this case are the Olympic Charter and the Qualification System – Games of the XXXIII Olympiad – Paris 2024 – World Athletics – Athletics.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

VII. DISCUSSION

A. Legal framework

39. According to Article 16 of the CAS Ad Hoc Rules, the Panel has “full power to establish the facts on which the application is based”.

B. Merits

40. Bye-law 1 to Rule 40 of the Olympic Charter reads as follows: “*Each IF establishes its sport’s rules for participation on the Olympic Games, including qualification criteria, in accordance with the Olympic Charter. Such criteria must be submitted to the IOC Executive Board for approval.*”
41. Accordingly, in 2022, WA published the OQS, thus setting out the qualification criteria for, *inter alia*, the men’s 400 m hurdles, the application of which is not in dispute.
42. Moreover, Rule 44, para. 5, of the Olympic Charter reads as follows: “*The NOCs shall send to the Olympic Games only those competitors adequately prepared for a high-level international competition. Through its IF, a national federation may ask that the IOC Executive Board review a decision by an NOC in a matter of entry. The IOC Executive Board decision shall be final.*”
43. The Sole Arbitrator initially notes that the Athlete appreciates that the French NOC, when entering Mr Vaillant, had reason to assume that he would be sufficiently prepared for competing and ready to compete at the Olympic Games in Paris.
44. However, based on Mr Vaillant’s apparent failure to pass the final “*competitiveness test*”, the Athlete now submits that the entry of Mr Vaillant was “invalid” and that the Athlete, being ranked no. 41 and thus the “next in line” should be declared eligible for the Olympic Games.
45. In this regard, and in accordance with Rule 44, para. 5, of the Olympic Charter, SA requested WA to request a review by the IOC Executive Board of the French NOC’s decision to enter Mr Vaillant, which the Sole Arbitrator considers to be an affirmation by SA (and the Athlete) of the IOC Executive Board being the only competent body to review such decision under the present circumstances.
46. However, WA omitted to forward such request to the IOC Executive Board, which therefore was never put in a position to review the decision or even to assess whether it was to review the French NOC’s decision to enter Mr Vaillant at all.
47. Based on the Application, the Sole Arbitrator understands that the Athlete does not submit that WA by itself was in a position pursuant to the applicable rules and regulations, and following SA’s letter of 27 July 2024, to decide on its own whether or not to declare the Athlete eligible for the Olympic Games in Paris based on the circumstances.
48. As a consequence, an appeal of the Appealed Decision directed against WA does not put the CAS Ad Hoc Division in a situation where it has the powers to decide on the Athlete’s eligibility for the Olympic Games in Paris “on behalf of” WA, which was not competent to make such decision in the first place.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

49. Instead, the Sole Arbitrator finds that the real object of the Application is WA's omission to forward the request for review to the IOC Executive Board, and the Athlete was indirectly informed of this decision in the Appealed Decision.
50. However, based on the Athlete's request for relief, the Athlete is not seeking a decision on whether SA was correct in deciding not to forward the request for review to the IOC Executive Board as he only requests the CAS Ad Hoc Division to declare him eligible for the Olympic Games.
51. Based on these circumstances and on the applicable regulations, the Sole Arbitrator is not in a position to grant the Athlete his request for relief.
52. This would also mean that the Sole Arbitrator would have to put himself in the role of the IOC Executive Board, which the Sole Arbitrator does not find possible in the current situation and based on the present circumstances.
53. In this regard, the Sole Arbitrator also notes that the decision of the French NOC to enter Mr Vaillant in the Olympic Games, which in fact is the decision that the Athlete is seeking to have declared "*invalid*", was made already at the beginning of July 2024, and thus outside the "period of ten days prior to the Opening Ceremony".
54. If the Sole Arbitrator were to decide on such decision based on the Athlete's appeal of the Appealed Decision, this would in fact constitute a circumvention of Article 1 of the CAS Ad Hoc Rules, which would not be acceptable.
55. The Sole Arbitrator appreciates the unfortunate situation of the Athlete and his understandable desire to participate in the Olympic Games in Paris.
56. However, based on the above, the Sole Arbitrator finds no other solution than to dismiss the Application, while at the same time stressing that this does not imply that he has ruled on WA's decision not to forward the request for review to the IOC Executive Board.
57. Furthermore, and for the sake of good order, the Sole Arbitrator notes that, based on the above, he does not find any need to deal with the questions whether the French NOC should have been named as respondent in the Application or whether the Athlete does in fact have standing to sue regarding the validity of the French NOC's decision to enter Mr Vaillant.

VIII. Costs

58. According to Article 22, para. 1, of the CAS Ad Hoc Rules, the services of the CAS Ad Hoc Division are free of charge.
59. According to Article 22, para. 2, of the CAS Ad Hoc Rules, parties to CAS Ad Hoc Division proceedings "*shall pay their own costs of legal representation, experts, witnesses and interpreters*".
60. Accordingly, there is no order as to costs.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

IX. CONCLUSION

61. In view of the above considerations, the Application filed on 2 August 2024 shall be dismissed.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

The Application filed by Mr Dany Brand on 2 August 2024 is dismissed.

Operative part: Paris, 4 August 2024

Award with grounds: Paris, 8 August 2024

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger

Sole Arbitrator