



## **Sports Arbitration including Olympic Athlete Disputes**

### **Introduction**

The past decade has seen an increased emphasis on using alternative dispute resolution (ADR) to resolve a variety of sports disputes. Some disputes involve the sports industry or individual athletes, although they do not directly involve an athlete's performance as such. For example, the American Arbitration Association each year administers hundreds of franchise, joint-venture, and partnership disputes. Some of these involve professional sports, such as disputes over partnership proceeds, termination of sports executives, the sale of a franchise, and payments under executive or partnership agreements.

### **United States Olympic Committee (USOC) Activities**

The AAA is named in the USOC Constitution and Bylaws to administer several types of amateur sports disputes. There are three major classes of disputes involving the Olympics that are resolved through arbitration--(1) eligibility of an athlete to compete in the Olympics or the Pan-American Games, (2) determination of the appropriate National Governing Body (NGB) for a particular amateur sport, and (3) positive findings of drug use during out-of-competition testing. These are discussed below.

The Amateur Sports Act, 36 US Code ' 383, provides that, "in its constitution and bylaws, the USOC shall establish and maintain provisions for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Pan-American Games, world championship competition, or other such protected competition as defined in such constitution and bylaws. In 1998, the Ted Stevens Olympic and Amateur Sports Act reiterated the use of arbitration to resolve Olympic and amateur sports disputes, including the recognition of a proper National Governing Body.

Following the passage of the Act, the USOC amended its constitution and bylaws to provide for arbitration of two general types of dispute--(1) eligibility of an athlete to compete ("eligibility disputes") and (2) the right of an organization to be declared the National Governing Body (NGB) for a particular sport ("franchise disputes"). Eligibility disputes are covered by the USOC Constitution, article IX, ' 2, and franchise disputes are covered by the USOC Constitution, article VIII, ' 3. The constitution provides that administration will be handled by the American Arbitration Association, with the Commercial Arbitration Rules applying except as otherwise stated in the constitution.



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### **Eligibility Cases**

Article IX, ' 2, the portion of the constitution governing eligibility disputes, reads as follows:

"[If] the controversy is not settled to the athlete's satisfaction, the athlete may submit to any regional office of the American Arbitration Association for binding arbitration, a claim against such USOC member documenting the alleged denial [of the right to compete] not later than six months after the date of denial. The Association, however (upon request by the athlete in question), is authorized, upon forty-eight hours' notice to the parties concerned, and to the USOC, to hear and decide the matter under such procedures as the Association deems appropriate, if the Association determines that it is necessary to expedite such arbitration in order to resolve a matter relating to a competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Association to do justice to the affected parties. By maintaining membership in the corporation, each member agrees that any such aforesaid controversy may be submitted to binding arbitration as provided in this Section and furthermore agrees to be bound by the arbitrators' award as a result thereof."

In view of the nature of these disputes, the Expedited Procedures contained in the Commercial Arbitration Rules are used. Where an athlete requests expedition, the AAA is authorized to expedite the process based on the criteria enumerated in the constitution section quoted above.

In eligibility cases, a single arbitrator is directly appointed by the AAA without submission of a list. The arbitrator usually has legal experience, due to the fact that these cases involve findings of fact and conclusions of law. Attorneys, retired judges, senior law partners, or individuals familiar with the particular sport are generally used.

The parties in eligibility disputes are the involved athlete and the National Governing Body of the involved sport. A coach or a trainer may also demand arbitration. The USOC is not a party, although the constitution requires that the USOC receive notices concerning arbitration under its constitution.

The bylaws require that the award include "findings of fact and conclusions of law."

### **Franchise Disputes**

Article VIII, ' 2, the portion of the constitution governing franchise disputes, provides for essentially two classes of dispute: (1) disputes between an NGB and an amateur sports organization concerning conduct of the NGB and (2) disputes between two amateur sports organizations over which one is to be the NGB.

The Commercial Arbitration Rules are applied, with the exceptions noted below. The Expedited Procedures do not apply.



Three arbitrators are to be assigned to USOC franchise disputes through a list provided by the AAA. Typically, attorneys, retired judges, or individuals familiar with the particular sport are suggested as arbitrators. Parties are allowed ten days to study the list, strike all names to which they have objections, and

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number the remaining names in the order of preference. When these lists are returned to the AAA, the case administrator compares indicated preferences and makes note of the mutual choices.

In franchise disputes, the parties are the involved amateur sports organizations. As is the case with eligibility disputes, the USOC is not a party but its constitution requires it to receive notices concerning these arbitrations.

AAA Commercial Arbitration Rules

AAA Demand for Arbitration Form

Procedures for Initiating Arbitration for Olympic Movement Disputes, including emergency arbitration

Athlete's Frequently Asked Questions for Olympic Movement Disputes

### **Anti-Doping Appeals Resolution**

In the late 1990's, the International Olympic Committee (IOC) recognized a challenge facing the Olympic sport movement. The problem of athlete doping in Olympic sports needed to be addressed in a unified manner. In 1999, the Olympic community, governments, and international agencies involved in drug enforcement met in Lausanne, Switzerland for the World Conference on Doping in Sport. The attendees of this meeting agreed upon the foundation of an international standard for controlling doping in Olympic sports. From that meeting, the World Anti-Doping Agency (WADA) was created. WADA's clearly stated goal is to have a "doping-free sport". In advance of the 2004 Athens Olympic Games, for the first time ever, the worldwide Olympic community was united in the creation of the World-Anti Doping Code (WADC)

The American Arbitration Association's involvement in administering sports-related arbitrations goes back many years. The 1998 Ted Stevens Olympic and Amateur Sports Act grants the United States Olympic Committee (USOC) the authority "to provide swift resolution of conflicts and disputes involving amateur athletes". The Act also recognizes the American Arbitration Association as the dispute resolution administrator. AAA had long been the administrative agency to resolve Olympic athlete grievances, and, for this reason, AAA's expertise in this area would be useful in administering any eventual athlete anti-doping disputes.

The United States Anti-Doping Agency (USADA) was created as the result of recommendations set forth by the USOC's Select Task Force on Externalization. As stated on USADA's website, before the creation of USADA: "The USOC was aware that its program lacked credibility internationally for a number of reasons, and the task force was charged with recommending both the governing structure (as represented by the Board of Directors) and responsibilities, which should be assumed by the new agency."



USADA began operations October 1, 2000, with full authority for drug testing, education, research, and adjudication for U.S. Olympic, Pan American, and Paralympic athletes. According to its Website, "USADA's process eliminates the National Governing Bodies' (NGB) involvement in sanctioning their own athletes." The simplified procedures reduce the time and financial burdens common in appeal procedures.

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The WADC requires that anti-doping organizations, like USADA, provide a "hearing process for any Person who is asserted to have committed an anti-doping violation." The WADC requires the hearing process to respect the following principles, among others: timeliness; administered before a fair and impartial hearing body; providing the athlete the right to be represented by counsel; the right to present evidence; and the right to a timely, reasoned decision.

USADA's adjudication process requires a hearing before arbitrators who serve on both the American Arbitration Association roster and the Court of Arbitration for Sport North American roster. The hearing proceeds under Rules adopted according to the USOC's Constitution and Bylaws. Although AAA and CAS work collaboratively to provide arbitrators for anti-doping arbitrations, it's important to note that the two organizations are separate from each other.

Although referred to as an arbitration, and indeed, the procedures under which these disputes are administered are referred to as the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, AAA's administration is an appellate claims review process for athletes who have allegedly committed anti-doping violations. In fact, the current Procedures allow the athlete an option to appeal the appellate decision rendered under the AAA's Procedures directly to CAS, or they can elect to bypass AAA's process altogether and proceed directly to CAS appeal.

The Procedures under which AAA administers these disputes can be modified at any time, pursuant to the USOC Constitution and Bylaws, by the agreement of the National Governing Body (NGB) Council and the Athletes Advisory Council (AAC), or by a two-thirds majority vote by the USOC Board of Directors. This process creates a fair system where both athletes and the NGBs can determine the best way to resolve future disputes.

AAA's Supplementary Procedures for Arbitration Initiated by the United States Anti-Doping Agency are used for arbitrations arising out of the aforementioned Protocol. The arbitrators for these disputes are made up of members of the North American Court of Arbitration for Sport (CAS) who are also AAA arbitrators.

### **Professional Sports Arbitration**

The AAA also provides hearing facilities for many Major League Baseball salary arbitrations and handles many sport-related business disputes arising from a variety of individual professional sport contracts and other agreements.



In professional sports, an arbitration clause is often found in a collective-bargaining agreement between a players' association and an owners' group. The usual issues involved are injury grievances, non-injury grievances, and salary arbitration. Arbitration clauses of this type are found in professional hockey, football, basketball, and baseball.

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#### **Baseball**

In addition to contractual grievance arbitration, the Basic Agreement between the Major League Baseball Players Association and the owners provides for arbitration of salary disputes. While these arbitrations are basically a form of labor arbitration, an arbitrator is not permitted to fashion remedies or write opinions. The Basic Agreement requires "last best offer" arbitration, in which both the team and the player involved submit their last offers to an arbitrator, who must pick one of the submitted figures. While this can at times produce what appear to be unusual results, the nature of this system induces the participants to bargain in good faith and results in a high percentage of settlements.

#### **Football**

The agreement between the National Football League Players Association and the National Football League provides for arbitration of what are essentially labor disputes between the team and a player. Issues can include salaries and whether an injury that precluded a player from performing was sustained as a result of play.

#### **Basketball**

The agreement between the National Basketball Association and the players' association provides for arbitration of **Hockey**

In addition to the agreement between the National Hockey League and the players' association, which provides for salary arbitration, the league's bylaws call for arbitration of disputes over "equalization payments." These cases arise when one team signs another team's player as a free agent. The signing team must make an "equalization payment" comprising other players, future draft choices, and/or money to compensate the old team for the loss of the free agent's services. Disputes over the nature and the amount of these payments are referred to arbitration.

#### **Actual Cases**

Some examples of past sports arbitrations indicate the variety of disputes that can be resolved through arbitration.



## **Olympic Cases**

The AAA's history with Olympic cases dates back several years. In 1996, prior to the start of the Olympic Games in Atlanta, Georgia, the AAA trained a panel of arbitrators to provide "real-time" dispute resolution at the Games. The arbitrators were told to be available at a moment's notice should any disputes be filed. Several cases were filed during the Games, and because of the AAA's swift response, those cases were resolved quickly. Similarly, at the request of the USOC, three arbitrators that were part of the group that was trained

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prior to the '96 Games were sent to the 2000 Sydney Games to be on hand throughout the entire Games, in the event that arbitration cases were filed.

Ultimately, no cases were filed in Sydney, but the AAA's responsiveness did not go unnoticed.

Most Olympic-related cases are filed on the eve of a qualifying event or on the eve of the Olympics itself. Three days prior to the opening of the Nagano Games in '98, an Olympic skier filed an arbitration. The AAA acted quickly and had an arbitration hearing scheduled within 24 hours. The arbitrator decided the skier was eligible for the games. In a case that made headlines prior to the Sydney Games, a wrestler filed an arbitration with AAA, contending that he lost the match because the other wrestler used an illegal hold. The arbitrator ordered a rematch, which the wrestler won. Ultimately, the courts decided in favor of the aggrieved arbitrator and he won a spot at the Sydney Games.

Other high-profile cases heard by the AAA include boxing, judo, taekwondo, cycling, softball, tennis, badminton, curling, speed skating, rowing and other sports.

## **The American Arbitration Association**

Many athletic disputes are resolved under the auspices of the American Arbitration Association, an international, not-for-profit, educational organization dedicated to the resolution of a wide variety of disputes through the use of arbitration, mediation, democratic elections, and other forms of alternative dispute resolution (ADR). The AAA, which was formed in 1926, is headquartered in New York City and has offices in cities throughout the United States and Europe. The AAA serves as a center for ADR education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

### **The AAA's Educational Mission**

The AAA is dedicated to educating others in the use of alternative dispute resolution. Seminars, conferences, and skill-building workshops are held globally to promote an understanding of alternative dispute resolution and to train people in the effective use of ADR tools and procedures. These programs are conducted across many business areas and industries, including commercial, construction, labor-management relations, insurance, banking, securities, computers, international trade, and real estate.



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