

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

NO: SDRCC 23-0677  
(ORDINARY TRIBUNAL)

GIANCARLO DIPOMPEO  
(Claimant)

- AND -

ROWING CANADA AVIRON  
(Respondent)

Charmaine Panko, K.C. (Arbitrator)

Counsel for the Claimant:  
Counsel for the Respondent:

Ms. Brittany Buna  
Ms. Cristy Nurse and Mr. Adam Klevinas

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JURISDICTIONAL AWARD WITH REASONS

SUMMARY

1. The Claimant, Giancarlo DiPompeo, ["Mr. DiPompeo"] has filed a request to initiate proceedings offered by the SDRCC [a "Request"].
2. Mr. DiPompeo is appealing the decision of the Respondent, Rowing Canada Aviron ["RCA"] to not nominate him for the 2023 Pan American Games [the "Decision"].
3. Under Article 3.1(a) of the *Canadian Sport Dispute Resolution Code* [the "Code"], SDRCC "Dispute Resolution Processes are available to any Person for the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b) and 3.1(c)."
4. Subsections 3.1(b) states that "the Person must first have exhausted all internal dispute resolution procedures provided by the rules of the applicable SO [Sport Organization]."
5. Paragraph 36 of RCA's Appeal Policy [the "Appeal Policy"], provides that "[an] appeal panel's decision is final and binding [...] subject to their right to appeal the decision before the SDRCC [...]"
6. RCA challenges the SDRCC's jurisdiction to act in this matter on the following basis:
  - a. Mr. DiPompeo did not file an internal appeal within the deadline prescribed by the Appeal Policy at paragraph 4b) of the policy and in accordance with paragraph 2a. of Appendix A to the policy, namely that an appeal of a

selection decision must be sent no later than seventy-two (72) hours of receipt of official notification of the original decision.

- b. The Appeal Manager denied the appeal for failing to meet the deadline prescribed.
  - c. There were no procedural defects in the Appeal Manager's decision.
  - d. The appeal could not then proceed to an appeal panel, and as such there is no decision to appeal from to the SDRCC as provided for pursuant to paragraph 36 of the Appeal Policy.
7. The SDRCC, with the consent of the parties, has appointed me as Arbitrator in this matter.
  8. Time was of the essence in this matter as the nomination deadline was pending. It was agreed that the parties would file written submissions on the question of jurisdiction of the SDRCC and that they would contemporaneously also file written submissions on the appeal of the merits.
  9. The parties did file written submissions as per above, and appeared before me prepared to speak to both the jurisdiction and the merits.
  10. Upon consideration of the submissions on the issue of jurisdiction, and upon review of the relevant materials, I concluded that the SDRCC does not have jurisdiction for the reasons set out below and, as such, it was unnecessary to hear submissions on the appeal itself.
  11. My review of the facts in this matter herein is therefore limited to the facts that were presented, relevant to the issue of jurisdiction.

## BACKGROUND

12. There was a 2023 Pan Am Games Selection the weekend of September 9 and 10, 2023 [the "Selection"].
13. On the evening of September 9, 2023, Mr. DiPompeo received an email from the NextGen Program Lead advising:

Based on the results, the coaches and myself will be providing the following Nomination to RCA's NextGen Selection Panel. Emerson Crick and Stephen Harris to be nominated.
14. The email further explained that the "[d]ecision for the nomination is based on the following [...]"
15. On September 10, 2023, Mr. DiPompeo sent a Microsoft Teams message stating his intent to challenge the decision. He did not however file a formal appeal.

16. Via email on September 11, 2023, the NextGen Program Lead encouraged Mr. DiPompeo to review the appeal process on the RCA website.

17. Mr. DiPompeo received a follow up email the evening of September 11, 2023, with the following comments contained therein:

I hope you feel that we were able [*sic*] provide you further information and clarity on how we came to the decision [...]

[A]s we discussed, I would encourage you to compile “your list” of concerns, share them with Adam Parfitt, and organize a meeting with him to discuss.

[...] The recommendations of the Coaches and myself have been communicated to the Selection Panel. The remainder of the selection panel (Adam Parfitt and Peter Cookson) still need to review and approve.

18. On September 16, 2023, Mr. DiPompeo sent an email titled “Appeal + Meeting”, attached his appeal document, and requested a meeting.

19. On September 19, 2023, Mr. DiPompeo sent his Appeal to the RCA CEO.

20. On September 20, 2023, the RCA CEO confirmed service of the Appeal and later that evening assigned an Appeal Manager.

21. The Appeal Manager denied the appeal as untimely, finding that:

a. “[...] Pursuant to Section 2(a) of Appendix A of the Policy, the Appellant must file their Notice, via email to the RCA Chief Executive Officer, within seventy-two (72) hours from notification of the decision being appealed.

b. [...] Unlike Section 7 of the Policy, which provides discretion for the Appeal Manager to accept an appeal beyond the typical fourteen (14) day limitation period for all other appeals upon the submission of exceptional circumstances by the Appellant, there is no such section within Appendix A of the Policy affording the Appeal Manager such discretion.

c. [I]n weighing the factors described above, especially since the Appellant, who is not a minor, was aware that the proper procedure was to submit the Notice to the RCA CEO, there were no exceptional circumstances preventing the Appellant from doing so within the mandated timeline, and by allowing this late appeal, would be prejudicial to the other affected athletes selected for the Championships. [...]

[the “Appeal Decision”]

## ANALYSIS

22. I agree with RCA that the SDRCC does not have jurisdiction to hear an appeal on the Decision as Mr. DiPompeo, the appealing party, has failed to properly exercise his rights and satisfy the conditions for filing an appeal under RCA's appeal process. This has been determined as such by the Appeal Manager.
23. There was no evidence led that the internal appeal process to arrive at the Appeal Decision contained any procedural defects.
24. The Appeal Decision satisfies the test of reasonableness having considered the supporting evidence and applying a plain understanding of the applicable facts and policies in this matter. As such it would be inappropriate for me to overturn that decision.
25. I also agree with Arbitrator Michel G. Picher in *Clattenburg v. Canoe Kayak Canada SDRCC 12-0190*, that a Claimant's failure to file an internal appeal in a timely fashion, when not justified by exceptional circumstances, constitutes failure to exhaust internal dispute resolution procedures and is a sufficient ground for the SDRCC to decline jurisdiction.
26. I do not find there to have been any exceptional circumstances in this matter. Though it was suggested that failing to take weekends into consideration creates a significant disadvantage, this can not be considered an exceptional circumstance. The 72-hour limitation period is set out clearly in the Appeal Policy and is surrounded by commentary that speaks to the fact that time is of the essence when selecting athletes for national teams.
27. I do not accept the proposition that Mr. DiPompeo was somehow misled by the use of any variation of the word "recommendation" and that he was unaware that a decision had been made. The evidence suggests otherwise. As Arbitrator Carol Roberts in *Scott v. Canoe Kayak Canada SDRCC 21-0498* states, there would be no reason to express an intention to challenge a decision if one did not believe a decision had been made.

## CONCLUSION

28. For the foregoing reasons, I have concluded that the SDRCC does not have jurisdiction in this matter.



Charmaine Panko, K.C.  
Arbitrator