

5. Hall alleged in her Complaint that:

The United States Sailing Association has violated the standards set forth in Section 220522 of the Ted Stevens Act and Section 10.5 of the USOC Bylaws, which require a National Governing Body (“NGB”) to provide “fair notice and opportunity for a hearing to any amateur athlete . . . before declaring the individual ineligible to participate,” and the more general obligation to provide for “the prompt and equitable resolution of grievances of its members.” Ted Stevens Olympic and Amateur Sports Act § 220522(a)(8), (13).²

6. On February 20, 2009, the Hearing Panel issued its Decision on Hall’s Article VIII Complaint. In its Decision the Hearing Panel found that:

US Sailing is not in compliance a) with Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5C of the USOC Bylaws and b) with Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws.³

7. Further, the Hearing Panel determined rather than issue an immediate finding of non-compliance with the USOC Board of Directors, it would instead provide US Sailing with an opportunity to rectify its non-compliance as provided by Article VIII, Section 8.4 of the USOC Bylaws (and Section 10.18 of the USOC Bylaws as amended on July 1, 2008).

8. The Hearing Panel allowed US Sailing until July 1, 2009 to report to the Hearing Panel as to how it intended to come into compliance and until September 1, 2009 to achieve compliance with the Act and the USOC Bylaws.

III. COMPLIANCE

A. US Sailing’s Response

9. On July 1, 2009, US Sailing responded to the Hearing Panel’s February 20, 2009 Decision.

² Hall’s Complaint, page 1.

³ Hearing Panel’s Decision, page 22.

10. US Sailing proposed a number of solutions in its July 1 response that it hoped would correct its compliance deficiencies. US Sailing also raised a number of issues relating to the Hearing Panel's Decision.

11. The Hearing Panel carefully reviewed and considered US Sailing's response, including the issues that US Sailing raised relating to the Panel's Decision. Further, the Panel met on two occasions to discuss US Sailing's response and this Order.

12. The Hearing Panel appreciates US Sailing's efforts to resolve this matter and believes that significant progress has been made in this regard. However, certain issues remain.

13. Accordingly, the Hearing Panel directs that US Sailing continue to work on the issues that were outlined in the Panel's February 20, 2009 Decision to reach compliance with the Act and USOC Bylaws. Additionally, the Hearing Panel wishes to provide further guidance to US Sailing.

B. International v. Domestic Events

14. US Sailing has raised the issue of which events are covered by the Hearing Panel's Decision. This is of concern to US Sailing as international events are often held in the United States.

15. It was never, and is not, the intent of the Hearing Panel that its Decision would apply to international events conducted by organizations not subject to the provisions of the Act and USOC Bylaws. The Hearing Panel's Decision only applies to competitions conducted by US Sailing.

16. Thus, the Decision does not apply to the Olympic Games, The Youth Olympic Games, the Paralympic Games, the Pan American Games and the Para Pan American

Games, even if those events are held in the United States. Those events are conducted under the auspices of international sports organizations, not US Sailing.

17. Further, the Decision does not apply to ISAF events, even if those events are held in the United States. Those events would include, but are not limited to, the ISAF World Championships, the ISAF Youth Sailing World Championships, the ISAF Match Racing World Championships, the ISAF Offshore Team Worlds, the ISAF Team Racing World Championships, the ISAF Women's Match Racing World Championships, and the ISAF Nations Cup. Those events are conducted under the auspices of the ISAF, not US Sailing.

18. Also, it makes no difference even if US Sailing uses ISAF events as part of its selection process for qualifying athletes for participation in an international competition, such as the Olympic Games. The Decision still would not apply to the ISAF events.⁴

19. The Decision does apply to events conducted by US Sailing. That is true even if competitors from other nations might compete alongside US athletes in those events.

C. Athlete Representation on Protest Committees

20. Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws (now Section 8.8 of the USOC Bylaws) requires that hearing panels be comprised of at least 20 percent athlete representation.

21. In its July 1 response US Sailing states that as a matter of policy it "values the participation and perspectives of sailing athletes" and that it looks forward to "increased participation of sailors in its hearing processes."

22. Concerning "protected competitions," US Sailing indicates that it would meet the requirements of Section 220522 of the Act and Section 17.7 (now Section 8.8) of the

⁴ Likewise, the Decision does not apply to sailing events conducted by National Sports Federations or NGBs of other countries, even if those events were somehow used by US Sailing in qualifying athletes for participation in an international competition.

USOC Bylaws by ensuring that individuals who meet the definition of “elite” athletes are appointed to all protest committees.

23. Regarding “non-protected competitions,” US Sailing indicates that because of the number of those events and the availability of “elite” athletes to serve on protest committees, it would be problematic to appoint athletes who meet the stricter “elite” athlete definition. However, US Sailing indicates that athlete representation could be accomplished by appointing “active sailors” to protest committees serving at “non-protected competitions.” However, US Sailing does not commit to this, but only states that it would “adopt a policy” that US Sailing “strongly supports and encourages” such athlete representation.

24. The Hearing Panel greatly appreciates US Sailing’s statements regarding the benefits of having athlete representation on protest committees.

25. The Hearing Panel approves US Sailing’s proposal regarding appointing “elite” athletes to protest committees at “protected competitions,” with one caveat. All National Championships held by US Sailing in events on the programs of the Olympic, Paralympic and Pan American Games, even if the National Championship does not come within the definition of a “protected competition” should have twenty percent “elite” athlete representation.⁵

26. The Hearing Panel also approves US Sailing’s proposal to appoint “active sailors” to “non-protected competitions,” rather than “elite” athletes, as it is the Panel’s determination, for purposes of this matter, that that this complies with the intent of Section 220522 of the Act and Section 17.7 (now Section 8.8) of the USOC Bylaws. However, the Panel does not approve of US Sailing’s proposal that it would only “encourage and support” such athlete representation. US Sailing must ensure that protest committees at “non-protected

⁵ It is possible that a National Championship would not be a “protected competition,” as it may not be part of a selection process qualifying athletes for participation in an international competition.

competitions” are comprised of at least twenty percent athlete representation, not just adopt a policy statement that it supports such representation. Compliance with this should not be difficult considering the number of “active sailors” participating in and attending these competitions.

27. The 20 percent athlete representation would apply to all hearings held by protest committees: protest hearings, request for redress hearings and Rule 69 hearings.

D. Protest Committee Hearings

28. Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5.C (now Section 8.7(a)) of the USOC Bylaws require that National Governing Bodies provide for an equitable hearing process, including due process protections, in hearings involving an athlete’s opportunity to participate.

29. In its February 20, 2009 Decision the Hearing Panel determined that these protections must be applied to protest committee hearings. Of particular concern to the Hearing Panel was that all affected athletes be allowed to participate in and be heard in these hearings.⁶

30. US Sailing in its July 1 response indicated that in order for it to comply with Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5.C (now Section 8.7(a)) of the USOC Bylaws, that in the event of a request for redress it would a) post a notice of the request for redress at the competition and b) allow all affected athletes to present their case at the redress hearing. Further, US Sailing indicated that it would “implement an enhanced training program for its officials on handling protest and redress cases” to ensure that they are managed accordingly. Finally, it indicated that it would arrange for a review board to be “on standby” to hear complaints involving denial of an opportunity to participate. However, US Sailing

⁶ Since affected athletes are always notified and allowed to participate in protest hearings and Rule 69 hearings, this is not an issue in those proceedings.

indicated that it would only follow these procedures at Olympic and Pan American team selection events.⁷

31. The Hearing Panel approves US Sailing's proposal regarding notice to affected athletes of redress hearings and of allowing them to participate fully in the hearing process. However, the Panel does not approve of US Sailing's suggestion that this procedure would only apply to Olympic, Pan American (and presumably Paralympic) team selection events. US Sailing must ensure that notice is provided to affected athletes and that they have an opportunity to present their case at all competitions.

32. Concerning US Sailing's proposal regarding review boards, the Hearing Panel has three comments. First, US Sailing is required by Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5.C (now Section 8.7(a)) of the USOC Bylaws to provide a hearing process for disputes involving an athlete's opportunity to participate for all competitions, not just for Olympic, Pan American and Paralympic team selection events. Second, in "protected competitions" an athlete always has the right to file a complaint directly with the USOC pursuant to Article IX (now Section 9) of the USOC Bylaws if he or she wishes. Third, the Hearing Panel endorses US Sailing's proposal to have a review board "on standby" for selection events, as that may help in resolving disputes immediately and hopefully with some finality.

IV. ORDER

33. The Hearing Panel affirms its February 20, 2009 Decision.

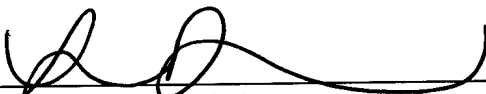
⁷ The Hearing Panel presumes that US Sailing also means to include Paralympic selection events, since US Sailing has been designated by the USOC to govern Paralympic sailing.

34. US Sailing shall continue with its compliance efforts so as to meet the Hearing Panel's directives as set forth in this Order.

35. US Sailing shall have until October 30, 2009 to report back to the Hearing Panel.

36. US Sailing shall provide a copy of its response to Hall. Hall may respond to US Sailing's response, but is not obligated to do so.

Dated this 28th day of August, 2009.



FOR

Nina Kemppe, Chair

Scott Fortune, Panel Member
Bob Mitchell, Panel Member
Jeanne Picariello, Panel Member
Ron Van Pool, Panel Member