INTERNATIONAL BOBSLEIGH & SKELETON FEDERATION
APPEALS TRIBUNAL

IN THE
MATTER OF

BOBSLEIGH FEDERATION OF RUSSIA,
APPELLANT

AND

EXECUTIVE COMMITTEE, INTERNATIONAL BOBSLEIGH &
SKELETON FEDERATION,
RESPONDENT

FINAL ORDER

THIS MATTER comes before the International Bobsleigh & Skeleton Federation (IBSF) Appeals Tribunal on the Appeal of Bobsleigh Federation of Russia (BFR) from a decision of the IBSF Executive Committee dated 2 March 2022 imposing a temporary suspension on BFR until the 2022 IBSF Congress (the “Suspension Decision”).

Jurisdiction

Section 18.1 of the IBSF Statutes vests jurisdiction in this Appeals Tribunal and states:

Any dispute arising between Members, or between one or more Members and the IBSF (including any dispute as to sanctions imposed by the Executive Committee), or between the IBSF and any individual or entity that is a member of or affiliated to a Member (each, a Dispute), shall be resolved exclusively by the means set out in this. . . .

This matter clearly involves a dispute between an IBSF Member and the IBSF and, therefore, is within the jurisdiction of the Appeals Tribunal (regardless of whether it involves a sanction, which the parties dispute).

Proceedings

BFR filed a letter with the Secretary General of IBSF on 4 March 2022 notifying the Appeals Tribunal of its appeal of the Suspension Decision. On 16 March 2022, the Appeal Tribunal issued Procedural Order No. 1 setting out a briefing schedule and indicating that a hearing would be held before the Appeals Tribunal on further notice. Through a series of e-
mail exchanges, the Appeals Tribunal modified the briefing schedule. Under the modified schedule, BFR submitted its Opening Brief and exhibits on 29 March 2022. IBSF submitted its Response Brief on 21 April 2022. Finally, BFR submitted a Reply Brief on 17 May 2022.

Following completion of the briefing and with notice to the parties, the Appeals Tribunal convened a hearing on 7 June 2022. In addition, the Appeals Tribunal conducted its own post-trial conference on 10 June 2022 to consider the appeal.

Having reviewed the briefs of the Parties, the Exhibits, and the arguments of counsel, the Appeals Tribunal determines the Appeal as set out below.

**Order**

This matter addresses the power of the Executive Committee (EC) to suspend a member National Federation on the basis that the government of the National Federation is alleged to have engaged in inappropriate military action in violation of the Olympic Charter.

For the avoidance of doubt, both parties are agreed that the IBSF Congress ultimately is charged with suspending or expelling member National Federations if a motion is submitted to that effect, but the power of the Congress under these circumstances to sanction, suspend, or expel BFR is not at issue in this case and has not been considered or decided by the Appeals Tribunal.

With respect to the authorities applicable to this dispute, it is clear that Swiss law applies together with the applicable provisions of the IBSF Statutes.

IBSF contends in support of the Suspension Decision that the decision taken by the EC:
- was fully supportive of the recommendation made by the International Olympic Committee (IOC) of 28 February 2022 regarding no participation of Russian and Belarusian athletes and officials;
- was within the discretionary powers of the EC as laid down in the IBSF Statutes;
- had merit in that the IBSF thereby maintained and ensured the smooth running and integrity of the organisation.

IBSF agrees that Article 1.1 of the IBSF Statutes provides for political neutrality. IBSF argues that whilst the IBSF shall conduct its activities neutrally from any governmental influences, that does not prevent it from taking a stance in regard to its values under current circumstances.

BFR, on the other hand, argues that the decision taken by the IBSF EC:
- lacks any legal basis;
- violates the principles of legality and predictability;
- was made in violation of BFR’s procedural rights;
- was disproportionate and more restrictive than IOC recommendations;
- contradicts IBSF’s principles, purposes and tasks.

A hearing took place on 7 June 2022 during which both parties had the opportunity to give an opening statement, state their case, question the other party and to make a closing
statement. The Appeals Tribunal was able to ask questions of both parties.

Having considered the representations in detail, both written and the points made by both parties at the hearing, the Appeals Tribunal has found the case made by BFR to be more persuasive and consequently the Appeal is upheld.

In particular, the Appeal Tribunal would like to highlight the following points:

- There is some confusion within the IBSF Statutes, especially where the Statutes refer to the authority of the EC which will become apparent below.

- The decision by the IBSF EC seems to hinge on Article 5.6.5 of the Statutes which states “A Member may be suspended by the Executive Committee until the next Congress for any of reasons set out in 5.6.3 of these Statutes, wherein the Congress will decide if the Member should be expelled, the suspension continued or the Member reinstated. Such a decision can be appealed to the IBSF Appeals Tribunal and the CAS”. By contrast, 5.6.2 states “If a Member has been inactive for three (3) years and has not paid its membership fees for three (3) years the Executive Committee can ask the Congress to remove the Nation as a Member of the IBSF. A two-thirds (2/3) majority is required for this”. Continuing, 5.6.3 states “In particular cases, the IBSF may enforce the expulsion or suspension of a Member on the grounds set out below, after confirmation by the Congress to do...” Thus, there is a contradiction between 5.6.5 and 5.6.2/5.6.3 which require the suspension of a Member to be confirmed by Congress before the suspension can come into effect. Furthermore, 5.6.4 continues in the same theme as 5.6.2/5.6.3 stating “The expulsion or suspension of a Member may be dictated by a two-thirds (2/3) vote of the Congress upon a motion by the Executive Committee. Within two (2) weeks after the Congress Resolution the expelled/suspended Member can appeal to the IBSF Appeals Tribunal and finally to the CAS.” Accordingly, the Appeals Tribunal feels the EC cannot rely on 5.6.5.

- Even without the contradictions in the Articles shown above, the Appeals Tribunal feels the EC could also not rely on 5.6.3.5. Here the Article states “5.6.3.5 For other reasons, e.g. fraud or criminal conduct”. Whilst it is not suggested that this Article is necessarily limited, the wording suggests it covers criminal or other similar egregious activity by the Member. The case put forward by the IBSF does not give a clear indication of any infringement allegedly carried out by BFR and therefore it is felt 5.6.3.5 could not be relied upon either.

- Paragraph 12 of the IBSF’s response to the opening brief of the Appellant includes “For IBSF it was the question of law and the Statutory duty to suspend BFR should the Executive Committee find that its full engagement in IBSF activities (committee meetings, organising of events, participation in events) would not benefit the overall interests of IBSF”. However, at the time the EC made its decision, the “on ice” season was all but finished and consequently the notion that BFR (or any other National Federation come to that) would be involved in “full engagement in IBSF activities (committee meetings, organising of events, participation in events)…” is self-evidently inaccurate. Furthermore, given the significant reduction in IBSF sporting activity, the proposition that the
suspension of BFR from all participation (including appointed Committee members) was “disproportionate” has some merit.

For the reasons set out above, the Suspension Decision is hereby vacated and shall be of no effect.

Dated this thirteenth day of June, 2022.

IBSF APPEALS TRIBUNAL

Steve Rowland-Jones
Steve Rowland-Jones, Vice-Chair*
Ben Heijmeijer
Sander Kevelaerts