



Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

**COURT OF ARBITRATION FOR SPORT (CAS)
Ad Hoc Division – XXIV Olympic Winter Games in Beijing**

sitting in the following composition:

President: Mr Fabio Iudica, Italy
Arbitrators: Mr Jingzhou Tao, France
Dr Maria A. Gwynn, Paraguay

**CAS OG 22/04 Adam Edelman & Bobsleigh Skeleton Israel (BSI) v. International
Bobsleigh and Skeleton Federation (IBSF)**

AWARD

in the arbitration between

Adam Edelman & Bobsleigh Skeleton Israel (BSI)

..... (the "Applicants")

and

International Bobsleigh and Skeleton Federation (IBSF)

..... (the "Respondent")

and

International Olympic Committee (IOC)

(the "Interested Party")

I. PARTIES

1. The First Applicant is Mr Adam Edelman, a bobsled pilot of Israeli nationality and a member of the Bobsleigh Skeleton Israel (BSI), competing in the 2-man bobsleigh discipline (also referred to as the “Athlete”).
2. The Second Applicant is the Bobsleigh Skeleton Israel (BSI), the national governing body for bobsleigh and skeleton in Israel.
3. The Respondent is the International Bobsleigh and Skeleton Federation (IBSF), the organization administering the sports of Bobsleigh and Skeleton at international level.
4. The Interested Party is the International Olympic Committee (IOC), the governing body of the Olympic Games and the organisation responsible for the Olympic Movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned by the Olympic Charter.

II. FACTS

A. Background Facts

5. The elements set out below are a summary of the main relevant facts as established by the Panel 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.
6. On 17 January 2022, the IBSF published the Ranking List of the 2-man Bobsleigh event at the XXIV Olympic Winter Game Beijing 2022 (the “OWG Beijing 2022”). According to the Ranking List, the BSI did not qualify for the Event, but appears in the first position in the list of the National Olympic Committees’ (the “NOC”/NOCs”) potential candidates for reallocation.
7. On 21 January 2021, the President of BSI, Mr David Greaves, wrote an email to the IBSF, in which the Athlete was also copied, submitting an inquiry on behalf of the BSI (and the Nigerian Bobsled Federation, “BSN”, as well), regarding the allocation of quota places within the IBSF Qualification System for OWG Beijing 2022 (the “IBSF Qualification System”) with respect to the Event.
8. Briefly, according to Mr Greaves, since not all available athlete quota spots were allocated, the BSI assumed that it could be granted the unused places, as it was first on the list of NOCs considered for reallocation.
9. The letter reads as follows in the relevant part: “[a]s we all understand it, there were 170 bobsled athlete quota'd spots allocated to the IBSF for the upcoming games in Beijing and only 161 quota'd spots have been filled. Currently both BSI

and BSN are within one or two spots on the reallocation list. By providing additional sleds to each discipline to fill the 170 quota places allocated, it would mean that the athletes just outside of the initial invitation or reallocation list would be brought on to the competition list. This is particularly relevant for female athletes in bobsleigh as there is currently a huge disparity of quota spots between men and women. For Nigeria and Israel this would be a historic step forward in bobsled as the first appearances in the 2-man for ISR and Mono for NGR”.

10. On the same day, the Secretary General to the IBSF, answered the following:

“In regard to the quota spots I cannot give you a precise answer as well, as it very much depends whether a bobsleigh team nominates the same team for 2-man and 4-man – so just that means more or less people. The decisive point are the quota places in our qualification system which are limited to 25 both in Men and Women Skeleton, 20 places in 2-woman bobsleigh as well as 20 places in Women’s Monobob, 30 in 2-man bobsleigh and 28 in 4-man bobsleigh. The qualification system states, exceeding the total amount of quota places is not allowed under any circumstances, furthermore, unused quota places in an event cannot be reallocated to another event”.

11. On 24 January 2022, in reply to the IBSF, the Athlete wrote an email stating the following: *“I would respectfully point out that we are not asking for a change in the quotas. Rather, our interpretation of the document is that there is a differentiation between quotas allocated for people and crews allocated for the event. There are 124 males quota'd, of which countries have elected to fill 117 positions. Seven quota slots are therefore left unfilled, enough for the addition of a 2 and 4 man team to fill the remaining quota positions. For the women this standard may also apply. Given the IOC has been amenable to consistent changes in the qualification criteria for both bobsled and skeleton, it is our request that the IBSF seek approval for filling the quota spots according to the interpretation above. I will submit payment this evening and an argument for consideration from the IBSF tribunal to consider.”*
12. On 24 January 2022, the BSI wrote a letter to the President of the IBSF, requesting the Executive Committee to render a formal deliberation in relation to the unused quota places for the men’s Bobsleigh event at the OWG Beijing 2022.
13. The position of the BSI in the abovementioned letter is the following: *“[a]ccording to the qualification pathway document 124 “quota” placements are allocated to men’s bobsleigh events, with 30 “crews” specified in 2 man and 28 crews specified in 4-man events. The distinction in the document is noteworthy because “quotas” are mentioned specifically in relation to the athletes and are distributed across disciplines. Crews are specified separately. Currently, 117 “quotas” of 124 are filled by countries with confirmed crews leaving 7 unfilled. The remedy to this situation, which would provide relief to two developing nations that sit first in line for reallocation would be to allocate these unused quotas in crews with 2- and 4-man Bobsleigh (filling 123/124 positions). This would not violate the stipulation in the criteria that quotas not be exceeded”.*

14. As a consequence, the BSI requested that an additional crew for both disciplines be added to the Bobsleigh event, granting it to benefit of the unused quota places.
15. On 25 January 2022, the Athlete wrote an email to the Secretary General to the BISF stating the following: *“It may have been better for the executive committee to review as it could be more timely and with greater ability to take action, so the appeal was forwarded to President Ferriani with you copied as well. Would it yet still be appropriate to also submit something to the tribunal as the EC deliberates? My thought was that the EC was a far more appropriate route but perhaps both work?”*
16. On the same date, 25 January 2022, the Secretary General to the IBSF, asked the Athlete to let her know whether the matter will go to the Appeals Tribunal or to the Executive Committee. In reply, the Athlete stated: *“The executive committee with all due haste today please since there is no formal decision to appeal against. We would request a decision from the EC at the earliest possible.”*
17. By an email on 27 January 2022, the Secretary General to the IBSF, informed the BSI that its request had been rejected by the IBSF Executive Committee (the “Appealed Decision”) on the following grounds:

“The IBSF Executive Committee has reviewed your request as of January 24th, 2022. The qualification system for bobsleigh stipulates the spots in two aspects:

First the overall number of max allowed athletes:

QUALIFICATION SYSTEM FOR XXIV OLYMPIC WINTER GAMES, BEIJING 2022

Number of crews qualified per NOC		Athletes quota per NOC
2-man	4-man	
1	0	2
2	0	4
0	1	4
0	2	8
0	3	12
1	1	4/5*
2	1	5/6*
3	1	6/7*
1	2	8/9*
2	2	8/9*
3	2	9
1	3	12/13*
2	3	12/13*
3	3	12/13*

*only if one 2-man pilot is different from the pilot in the 4-man

Secondly, it gives the overall numbers of teams to qualify:

B.2 Maximum Number of Athletes per NOC:

2-man

- *Max 2 NOCs with 3 crews per event*
- *Max 7 NOCs with 2 crews per event*
- *10 NOCs with 1 crew per event*

4-man

- *Max 2 NOCs with 3 crews per event*
- *Max 7 NOCs with 2 crews per event*
- *8 NOCs with 1 crew per event*

While we developed the QS, the intent was to qualify crews for the team disciplines and we allowed for additional individual quotes in case teams used separate pilots. National Federations built strategies based on this qualification system. Strategies may have been different if they had known there was a possibility of qualifying more crews than what we published.

So, the IBSF Executive Committee rejects your proposal”.

III. THE CAS PROCEEDINGS

18. On 29 January 2022, at 08:30 (time of Beijing) the Applicants filed an Application with the CAS Ad Hoc Division against the Respondent with respect to the Appealed Decision. Later on, the Application was notified by the CAS Ad Hoc Division to the Respondent and to the Interested Party.
19. On the same day, at 15:21 (time of Beijing), pursuant to Article 15 lit. c para. 1 of the CAS Arbitration Rules for the Olympic Games (the “CAS Ad Hoc Rules”), the Parties were notified with the composition of the Arbitral Tribunal (the “Panel”) as follows :

President: Mr Fabio Iudica, Italy

Arbitrators: Mr Jingzhou Tao, France

Dr Maria A. Gwynn, Paraguay
20. At the same time, the CAS Ad Hoc Division invited the Respondent to file its Answer by 30 January 2022, at 14:00 (time of Beijing) and informed the Interested Party of its entitlement to file an *amicus curiae* brief within the same deadline. Pursuant to Article 15 lit. c para. 1 of the CAS Ad Hoc Rules, the Parties were

also invited to appear at the hearing which would be held by videoconference on 30 January 2022, at 17:00 Beijing time.

21. On 29 January 2022, at 20:02 (time of Beijing), the Respondent, on the ground that “*the first official bobsleigh training takes place only on 10 February 2022*” requested an amendment to the procedural schedule suggesting a postponement of the deadline to file its Reply, and any *amicus curiae*, by 1 February 2022, 06:00 (time of Beijing), as well as postponement of the hearing on 1 February 2022, at 13:00 (time of Beijing).
22. The CAS Ad Hoc Division, at 21:30 (time of Beijing) of the same day, invited the Applicants to comment the Respondent’s request within one hour.
23. The Applicants, within the deadline granted, emphasized the utmost urgency of the matter due to the “*first trainings for bobsleigh [which] will be held on 2 and 3 February*”, as well the “*numerous administrative and organizational aspects that Mr Edelman would have to take care of in order to travel to Beijing*”. For this reason, and in order to have the dispute decided before 31 January 2022 at the least, so as to grant the Athlete “*sufficient time [...] to acclimate and be in good mental and physical shape to participate in the Olympic Games at the best of his abilities*” the Applicants stated that they would only accept an extension of the time limit to file the Reply, and any *amicus curiae*, until 30 January 2022 at 17:00 (time of Beijing) and a postponement of the hearing no later than 31 January 2022 at 17:00 (time of Beijing).
24. At 23:09 (time of Beijing) on 29 January 2022, the CAS Ad Hoc Division informed the Parties that the Panel partially granted the requested change in the procedural schedule and invited the Respondent to file its Reply, and the Interested Party its *amicus curiae* brief, if any, by 30 January 2022 at 24:00 (time of Beijing), and summoned the Parties to appear at hearing on 31 January 2022 at 15:00 (time of Beijing).
25. On 30 January 2022, at 12:54 (time of Beijing), according to Article 18 of the CAS Ad Hoc Rules, the President of the CAS Ad Hoc Division extended the time-limit for the Panel to render a decision, until 31 January 2022 at 23:30 (time of Beijing).
26. On 30 January 2022, at 22:39 (time of Beijing), the Interested Party informed the Panel that it would not file any *amicus curiae*, since “*the present matter concerns primarily the interpretation of the IBSF’s Rules*”.
27. On 30 January 2022, at 23:55 (time of Beijing) the Respondent filed its Reply.
28. On 31 January 2022 at 15:00 (time of Beijing) a hearing was held with the participation of the following persons, in addition to the Panel and Mr Giovanni Maria Fares, Counsel to the CAS, all attending remotely via videoconference:

For the Applicants:

- Mr Adam Edelman;
- Mr Larry Sydney, General Secretary of BSI;
- Mr Marc Cavaliero, Counsel;
- Mr Jaime Cambreleng, Counsel;
- Ms Carol Etter, Counsel.

For the Respondent:

- Ms Heike Grösswang, IBSF Secretary General;
- Mr Stephan Netzle, Counsel.

For the Interested Party:

- Mr Antonio Rigozzi, Counsel.

29. There were no objections to the constitution of the Panel and the Parties confirmed that their right to be heard and to be treated equally was respected.
30. On 31 January 2022 at 19:52 (time of Beijing) the Panel issued the operative part of the award which was notified by the Parties by the CAS Ad Hoc Division.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

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

A. The Applicant

a. Applicant's Submissions

32. The Applicant's submissions may be summarized, in essence, as follows:
33. In light of the IBSF ranking with regard to the qualification for men Bobsleigh competition, the Applicants submit that there are currently only 117 places filled up by athletes out of the 124 available qualification quota places, given that most NOCs are sending the same pilots in both disciplines. This element was not disputed by the IBSF in the Appealed Decision. As a consequence, there are 7 athletes qualification quota places unfilled that can be further allocated.

34. In such context, the BSI requests to be granted the unused athletes' quota spots as it is the first ranked in the list for reallocation, in order to allow the First Applicant to participate in the 2-man Bobsleigh event, as it is also not disputed that the Athlete complies with all the provisions and requirements for the participation in the OWG Beijing 2022.
35. The Applicants argue that, according to the IBSF Qualification System, the maximum number of quota places only refers to the number of athletes allowed into the competition and not to the number of crews of each NOC and therefore, the decision of the Executive Committee of the IBSF to reject their request is wrong.
36. In fact, according to Section B.1 of the IBSF Qualification System, a maximum of 124 male athletes (out to a total of 170) can participate in the bobsleigh competition, provided that the maximum number set forth under Section B.2 for each NOC is respected.
37. On the contrary, there is no provision in the IBSF Qualification System limiting the number of crews; therefore, the number of crews is irrelevant when considering the allocation of quota places.
38. Such a conclusion is confirmed by the only plausible interpretation of the IBSF Qualification System: a) Section B is intitled "Athletes Quotas" which clearly indicates that only the number of athletes which can take part into a competition counts rather than the number of crews; b) likewise, sub Section B1 named "Total Quota for Sport/Discipline" only mentions the "Qualification Quota Places" with reference to 124 male athletes, with no further indication of the number of crews; c) in addition, sub Section B.2, making reference to the "Maximum Number of Athletes per NOC" exclusively establishes the maximum number of NOCs that can qualify more than one crew, but it does not determine the maximum number of NOCs that can participate in the Olympic Games with one crew (as is the case of the BSI). There is no express limitation to the number of NOCs with one crew, to the contrary of the rule for the 2-woman bobsleigh (and there is a similar rule for the women's Monobob). Therefore, the Appealed Decision does not comply with the IBSF applicable provisions.
39. The reason why there would be no limitation of NOCs that can qualify 1 crew resides in the main principle embedded into the Olympic Games which is to guarantee the maximum participation of the highest possible number of countries rather than only qualifying the strongest athletes. And in any event, admitting the qualification of the Athlete would not negatively affect any other athlete and would not exceed the maximum number of athlete's quota places.
40. In addition, the Athlete was placed in disadvantage by the latest amendments to the IBSF shortly prior to September 2021, namely, with respect to the number of races taken into account for determining the ranking list (from the original 8 races to the actual 7) and the consequences of the Covid-19 pandemic, due to numerous teams being unable to compete at the World Cup for reasons of testing

positive for COVID-19, which finally resulted in competitive imbalance to the detriment of the Applicants.

b. Applicant's Requests for Relief

41. The Applicant's request for relief is as follows

- *Annul the Challenged Decision not to allocate the unused athlete quota spots to BSI and Mr. Edelman;*
- *To grant and allocate two unused athletes quota spots to the Bobsleigh Skeleton Israel for it to use in the 2-man Bobsleigh competition;*
- *To allow Mr. Edelman to make use of the two unused athletes quota places and to allow him to participate in 2-man Bobsleigh competition at the Olympic Games Beijing 2022.*

B. The Respondent

a. Respondent's Submissions

42. As an initial point, the Respondent contests the jurisdiction of the CAS Ad Hoc Division alleging that the Applicants have not exhausted the applicable internal remedies. In fact, in the Respondent's view, the Applicants should first have challenged the Appealed Decision to the IBSF Appeals Tribunal in accordance with Article 18 of the IBFS Statutes. As a consequence, the Applicants are now precluded from filing a request for arbitration before the CAS Ad Hoc Division, failing compliance with Article 1 CAS Ad Hoc Rules.

43. With regard to the merits of the present case, the Respondent does not dispute that after conclusion of the qualification phase of the OWG Beijing 2022, 7 quota places out of the total amount of 170 have remained unfilled.

44. However, although the final number of allocated quota spot may indeed vary because of the same athlete competing as pilot in both the 2-man and the 4-man bob, there is no right of "reallocation" in case not all of these individual quota places have been filled.

45. Reference must be made to the maximum number of athletes set forth under Section B.2 of the IBSF Qualification System, according to which only 30 crews and only 19 NOCs (either entitled to 3, 2 or 1 crew) are allowed to participate in the 2-man Bobsleigh competition. This is also illustrated in the IBSF ranking 2-man Bobsleigh which was not disputed by the Applicants.

46. Since it results that all 19 NOCs used the full quota of 1, 2 or 3 crews for the 2-man Bobsleigh event, as it is illustrated in the Ranking List, there is no unused quota, although not all individual athlete's quota for the discipline needed to be

used (due to the fact that the same athlete may usually compete both in the 2-man and the 4-man bob).

47. Therefore, while, in principle, the addition of two more athletes would not be in breach of the "Total Qualification Places" as long as the maximum of 124 male athletes was not reached, the addition of one NOC with one 2-man bob crew would definitely exceed the absolute maximum of 19 NOCs and 30 crews.
48. As to the Applicant's argument that there would be no limitation to NOCs with 1 crew since the wording of Section B.2 does not bear the word Maximum before the relevant category, this is completely unsupported in consideration of the fact that the number of quota places with respect to the 2-man bobsled are 30 crews according to the IBSF Qualification System D.1. first column, and this number is reached only by the calculation according to paragraph B.2 based on 10 NOCs with 1 crew per event.
49. In addition, according to the allocation rule under Section D.1.3, "after the allocation of the 2 NOCs with 3 crews and the 7 NOCs with 7 crews, the remaining 10 quota places will be allocated to the top 10 NOCs".
50. Therefore, these 10 quota places apply to the third group of 10 NOCs with 1 crew per 2-man event and cannot be amended by further crews because this would lead to an increase of the absolute maximum number of crews beyond 30 which is also prevented by Section F of the IBSF Qualification System. The only way to grant a quota place for the 2-man bob event to another NOC would be by way or reallocation. However, there is no "Unused Quota Spot" for the 2-man spot to reallocate at the OWG Beijing 2022 and Applicants confirmed that they are not asking for reallocation.
51. With regard to the Applicants' argument that the Athlete suffered disadvantage due to the reduction from 8 to 7 races valid for points accrual, it is to note that this did not prevent the Athlete from participating in more races since the relevant number indicates the 7 best results achieved during the qualification period, irrespectively of the number of races; in addition such reduction applied to all competitors in the same way and therefore, there has been no unequal treatment. Likewise, although the impact of the Covid-19 pandemic may have affected all the competitors in different ways, this cannot be compensated by disregarding the IBSF Qualification System.

b. Respondent's Requests for Relief

52. The Respondent's request for relief is as follows:
 1. *Not to accept the Application because of lack of jurisdiction;*
 2. *To dismiss the Application in its entirety to the extent that it is admissible;*

3. *To order the Applicant to pay a fair contribution towards the Respondent's legal costs to be determined by the Panel.*

V. JURISDICTION AND ADMISSIBILITY

53. 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”.

54. The present dispute concerns the request for allocation for unused quota places for the participation in the 2-man Bobsleigh competition of the OWG Beijing 2022; therefore, as a first consideration, the Panel is satisfied that the dispute is in connection with the Olympic Games and that the requirement under Rule 61.2 of the Olympic Charter is met.
55. On the other hand, the Panel notes the Respondent objects the jurisdiction of the CAS Ad Hoc Division alleging that the Applicants have not exhausted the applicable internal remedies according to Article 1 of the CAS Ad Hoc Rules, which provide as follows:

“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.

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 her/him 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.”

56. In the Respondent's view, the Applicants should first have lodged appeal with the IBSF Appeals Tribunal.
57. At the hearing, however, the Respondent, while formally maintaining its objection, recognized the existence of special and exceptional circumstances due to the

time pressure of the OWG Beijing 2022, leaving it to the Panel to decide whether or not to enter into the merits of the dispute.

58. The Panel first notes Article 18 of the IBSF Statutes, which reads as follow:

“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 Article 18, to the exclusion of any other means [...]”. “18.2 In the first instance, a Dispute shall be referred to the IBSF Appeals Tribunal for hearing and determination in a fair and impartial manner in accordance with these Statutes and the IBSF Appeals Tribunal Rules”

59. In addition, the Panel notes that the IBSF Appeals Tribunal is governed by the IBSF Appeals Tribunal Code, which, in its article IV.B(i), states: *“[t]he Tribunal shall hear appeals from the following decisions: ...Decisions of the Executive Committee or any other standing committee in which the IBSF Statutes grant a right to appeal to the Tribunal [...]”*

60. Furthermore, Article X of the IBSF Appeals Tribunal Code, states: *“[A]ppeals from Decisions of the Tribunal. Any decision of the Tribunal (except a decision of the Tribunal acting as Appeal Body under Section IV.C above) may be appealed to the Court for Sport (CAS) under the CAS Code of Sports-Related Arbitration within twenty-one calendar days of the issuance of the Order, except that the Tribunal may, where circumstances require, shorten or extend the time for appeal by written Order on the application of any party. In no event shall that time for appeal be shortened to fewer than five business days from the date that the Order is transmitted to the parties. CAS shall have exclusive jurisdiction over appeals from decisions of the Tribunal, and no other arbitration, court, or legal body under any jurisdiction shall have the authority to hear appeals.”*

61. Accordingly, pursuant to Article 18.3 of IBSF Statutes: *“[d]ecisions of the IBSF Appeals Tribunal shall be final and binding on the parties, and may only be challenged by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland (CAS), which is independent of the IBSF and which will resolve the dispute definitively- in accordance with the CAS Code of Sports-Related Arbitration. The time limit for filing the appeal against a decision of the IBSF Appeals Tribunal is twenty-one days after receipt of the decision.”*

62. In accordance with the mentioned disposition of the IBSF internal regulation, the Panel observes and is satisfied that, indeed, the Applicants should have, in the first place, challenged the Appealed Decision with the IBSF Appeals Tribunal, since the Appealed Decision clearly falls within the jurisdiction of the IBSF Appeals Tribunal.

63. Hence, the Panel believes that, in strict compliance with Article 1 of the CAS Ad Hoc Rules, the Applicants have not exhausted the internal remedies of the IBSF, which should result, in principle, in the CAS Ad Hoc Division not having jurisdiction to hear the present case. This, however, “*unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective*”.
64. As a preliminary note, the Panel wishes to underline the extraordinary character of the specific exception provided for at Article 1 of the CAS Ad Hoc Rules, which shall be applied only in particular circumstances of, e.g., extreme, evidenced urgency. The assessment of the possible application of the exception to the need to exhaust the internal remedies has to be assessed on a case by case basis and in consideration of all circumstances of the particular case. In addition, the Panel notes that the burden to prove the existence of exceptional circumstances justifying a depart from the principle of exhaustion lies on the applicant, which shall prove the “*illusory character*” of the internal legal remedies (s. MAVROMATI / REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, n. 35 ad Article R47 of the Code).
65. The Panel notes that the Applicants have underlined the utmost urgency of the present matter and the need to have the dispute decided by no later than 31 January 2022, in order to allow the Athlete to travel to Beijing. In this regard, the Panel observes that, according to the “Sliding Sports General Schedule Beijing 2022”, published on 20 August 2021, the start of the men’s and women’s Bobsleigh pre-training session is scheduled for Wednesday 2 February 2022 at 8:30 (time of Beijing). Therefore, considering that the Appealed Decision was issued on 27 January 2022, the Panel notes that there would only be 5 days (of which 2 are not working days) between the date of the Appealed Decision and the moment in which the Applicants would be expected to appear at the venue of the OWG Beijing 2022. The Panel is of the opinion that, notwithstanding the limited time available and the time pressure, the Applicants still could have filed an appeal with the IBSF Appeals Tribunal in order to fulfil their obligation to comply with the procedural requirements of the CAS Ad Hoc Rules (which would not have prevented them to file an application with the CAS Ad hoc Division at the same time, as a preventive measure). However, given the exceptional circumstances of the case, amplified by the pandemic context within which OWG Beijing 2022 are taking place, the need for the Athlete to fulfil several administrative and health-related formalities to enter the so-called Olympic Closed Loop (which, notably, include several administrative and health-related steps to comply with), the Panel accepts that the Applicants could reasonably not be expected to instigate proceedings before the IBSF Appeals Tribunal, obtain a decision and eventually file an application with the CAS Ad Hoc Division in due time for the appeal before the CAS to be effective.
66. Thus, while the Panel notes the lack of exhaustion of the existing internal remedies and endorses the paramount and essential need to comply with this formality, failing which jurisdiction shall be denied, the Panel appreciates the petition of urgency of the Applicants considering the start date of competition on

2 February 2022. The Panel is aware of the time pressure with regard to which said exhaustion of internal remedies could make the appeal to the CAS Ad Hoc Division ineffective. Furthermore, the Panel is also comforted by the fact that the Respondent itself recognized the existence of these exceptional circumstances and did not insist, while maintaining it, on the objection to the jurisdiction of the CAS. In this particular regard, without however entering into any assessment as to whether the Respondent should be estopped from objecting the jurisdiction of the CAS, the Panel also finds that the communication of the Respondent dated 25 January 2022 (at 06:07 CET) created some uncertainty, as it could have actually suggested that there was a possible choice of forum in which the present dispute should have been dealt with.

67. Therefore, considering that (i) the present dispute concerns the request for allocation for unused quota places for the participation in the 2-man Bobsleigh competition of the OWG Beijing 2022; (ii) the risk imposed by the time needed to exhaust the internal remedies in making the appeal to the CAS Ad Hoc Division ineffective; and (iii) the explicit acceptance for the Panel to deliberate on the matter given by the Respondent at the hearing, the Panel exceptionally believes that in the light of the specific circumstances of the present case and based on the considerations above, the CAS Ad Hoc Division has jurisdiction over the present matter in accordance with the specific exception under Article 1 of the CAS Ad Hoc Rules.
68. In view of the above considerations, the Panel affirms that it has jurisdiction over the present dispute.

VI. APPLICABLE LAW

69. Under art. 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."
70. The Panel notes that the "applicable regulations" in this case are the IBSF Statutes and Regulations and namely, the IBSF Qualification System.

VII. DISCUSSION

A. Legal framework

71. These proceedings are governed by the Ad Hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003 (amended on 8 July 2021). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PILA"). The PILA applies to this arbitration as a result of the express choice of law contained in art. 17 of the Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the

seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS Ad Hoc Rules.

72. According to art. 16 of the CAS Ad Hoc Rules, the Panel has "full power to establish the facts on which the application is based".

B. Merits

73. The task of the Panel is to decide whether to overturn the Appealed Decision and to uphold the Applicants' request to be granted the allocation of two unused quota places for the 2-man Bobsleigh competition in the OWG Beijing 2022 and to allow the First Applicant to participate in the 2-man Bobsleigh event.

74. The Panel observes that it is undisputed between the Parties that, after the qualification phase, only 117 athletes' quota places out of the 124 available have been assigned to the qualified NOCs and therefore, 7 athletes quota places have remained "unused".

75. What is disputed in the present case is whether the Applicants are entitled to the assignment of these 7 unused spots, based on the position of the BSI at the top of the list of potential candidates for reallocation.

76. In order to decide the present dispute, the Panel makes reference to the provisions set forth under the IBSF Qualification System with respect to Men Bobsleigh competition, whose applicability is uncontested.

77. According to Section B.1, the qualification quota places for male athletes amounts to a maximum of 124 which is also not disputed.

78. Section B.2 further specifies the maximum number of athletes per NOC which, in the 2-man Bobsleigh, is distributed as follows:

"Max 2 NOCs with 3 crews per event

Max 7 NOCs with 2 crews per event

10 NOCs with 1 crew per event

79. Section B.3. of the Qualification System provides the following: "[t]he quota place/s is/are allocated to the NOC. The selection of athletes for its allocated quota places is at the discretion of the NOC subject to the eligibility requirements".

80. Further, according to Section D.1, the number of quota places in the 2-man Bobsleigh is distributed in 30 crews, which is corroborated by the distribution rule under Section B.2 above. The allocation of quotas in the 2-man Bobsleigh is further established under Section D.1.3 as follows:

“D.1.3.1 The quotas for the 2 NOCs with 3 crews will be allocated to the top 2 NOCs with the third best pilot on the 2-man IBSF Ranking List (as described in D.1.1) as of 16 January 2022 (23:59 Lausanne time);

D.1.3.2 The quotas for the 7 NOCs with 2 crews will be allocated to the NOCs with the second-best pilot on the 2-man IBSF Ranking List (as described in D.1.1) as of 16 January 2022 (23:59 Lausanne time) which have not been allocated a quota place from D.1.3.1;

D.1.3.3 The remaining 10 quota places in 2-man will be allocated to the top 10 NOCs with the best ranked pilot on the 2-man IBSF Ranking List (as described in D.1.1) as of 16 January 2022 (23:59 Lausanne time) which have not been allocated a quota place from D.1.3.1 and D.1.3.2”.

81. Given this legal framework and, in the light of the combined reading of Section B and Section D.1, the Panel’s understanding is that the 124 athletes’ quota shall be allocated in such a way that the following limits are not exceeded, with respect to the 2-man Bobsleigh:
 - A maximum number of 19 qualified NOCs
 - A maximum number of 30 crews distributed among the 19 NOCs (of which, maximum 2 NOCs with 3 crew, maximum 7 NOCs with 2 crews and the remaining 10 with 1 crew each).
82. In such context, the Panel further considers that the final number of male athletes in competition, up to the maximum of 124, may indeed vary because of the same athlete competing as pilot in both the 2-man and the 4-man bob; which is also the present case.
83. In view of the above, the Applicants’ allegation that there is no provision in the IBSF Qualification System limiting the number of crews is, therefore, baseless and must be rejected.
84. Such conclusion is also confirmed by the information contained in the 2-man Bobsleigh Ranking List issued by the IBSF, which has not been contested by the Applicants. Moreover, as it was underlined by the Respondent, the Ranking List shows that all 19 eligible NOCs used the full quota of 1, 2 or 3 crews for the 2-man bob competition and, therefore, the Panel agrees with the Respondent that there is no "unused quota" for another crew left – even if not all individual athlete quotas for the discipline "bobsleigh, men and women" needed to be used.
85. In fact, the Panel observes that, upholding the Applicant’s request to be allocated two quota unused spots for the 2-man bobsleigh event would have the twofold effect to exceed both the maximum number of qualified NOCs (19) and the maximum number of crews (30), which is not in compliance with the IBSF Qualification System and is also expressly prohibited under Section F of the same regulations.

VIII. COSTS

86. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division “are free of charge”.
87. According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to CAS ad hoc proceedings “shall pay their own costs of legal representation, experts, witnesses and interpreters”.
88. It was confirmed at the hearing that none of the Parties seek costs. Accordingly, there is no order as to costs.

IX. CONCLUSION

89. In view of the above considerations, the Applicants’ application filed on 29 January 2022 shall be dismissed.

DECISION

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

The application filed by Mr Adam Edelman & Bobsleigh Skeleton Israel (BSI) is dismissed

Operative part: Beijing, 31 January 2022

Award with grounds: Beijing, 4 February 2022

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Fabio Iudica
President of the Panel

Jingzhou Tao
Arbitrator

Maria A. Gwynn
Arbitrator