

INTERNATIONAL SKATING UNION

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Case No. 2014-01

February 5, 2014

**Decision
of the
ISU Disciplinary Commission**

Panel:

- Volker Waldeck, Chair
- Fred Benjamin
- Susan Petricevic

In the matter of

International Skating Union, Chemin de Primrose 2, 1007 Lausanne, Switzerland,
represented by its Legal Advisor, Prof. Dr. Michael Geistlinger,

- Complainant -

against

Mr. Sjinkie Knegt,
Netherlands,

- Alleged Offender -

and

Koninklijke Nederlandsche Schaatsenrijders Bond,
Mississippidreef 153, NL-3565 CE Utrecht,
Email: s.vrakking@knsb.nl

-Interested ISU Member-

Concerning alleged violation of the ISU Code of Ethics

I. History of the Procedure

On January 30, 2014, the ISU filed a complaint against the Alleged Offender, together with one exhibit and a web link to the internet platform of YOUTUBE.

The Complainant moves:

- 1. To find the Alleged Offender guilty of violation of the ISU Code of Ethics.*
- 2. To order by Provisional Measure to immediately suspend the Alleged Offender from participation at the 2014 Sochi Olympic Winter Games, administered by the ISU.*
- 3. To impose on the Alleged Offender a suspension from participation at the 2014 Sochi Olympic Winter Games and ISU events thereafter for a period deemed appropriate by the DC.*

On January 31, 2014 the Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within four days upon receipt of the complaint. The Alleged Offender sent an email reply on February 3, 2014. The Interested Member filed one brief on February 2, and a second one on February 3, 2014. Additionally the Netherlands Olympic Committee filed a statement of reply on February 3, 2014.

On February 4, 2014 the Complainant filed a brief answering to the reply of KNSB and the Dutch NOC.

II. Procedural Matters

1. According to Article 24 paragraph 1 of the ISU Constitution and General Regulation 2012 the Disciplinary Commission ("DC") serves as an authority of first instance to hear and decide all charges referred to it against a skater or other participant in ISU activities (Alleged Offender) accused of a disciplinary or ethical offence.

2. The present case arises out of the ISU European Short Track Speed Skating Championships in Dresden (Germany) on January 19, 2014, where the Alleged Offender has participated as skater and is accused of disciplinary and ethical offences. Therefore, the DC has jurisdiction to hear and decide the present case.

3. The present case is governed by the ISU Code of Ethics 2012 (ISU Communication 1717) and the ISU Disciplinary Commission Rules of Procedure (ISU Communication 1419).

III. Facts

The Alleged Offender, Mr. Sjinkie Knegt, is a 23 years old member of the Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB). He participated at the ISU European Short Track Speed Skating Championships 2014 in Dresden.

On January 19, 2014, the Alleged Offender skated as last member of the team of the Netherlands in the Men's 5000 m relay race and finished second, about 5 - 7 meters behind the Russian skater Viktor Ahn. Mr. Ahn had overtaken Mr. Knegt in a surprising attack in the last lap of the race. When Mr. Ahn approached the finish line, he raised both arms apparently in

victory salute and held them aloft after he crossed the line and continued towards the corner. Immediately behind him and offset slightly was Mr. Knegt and prior to the finish line Mr. Knegt had his hands held up at shoulder height with two fingers raised (being clenched fists with the middle finger of each hand straight up) and pointing at Mr. Ahn. Then, about 10-12 meters after the finish line, Mr. Knegt swung his foot in a very high kick which was aimed in the direction of Mr. Ahn but there was sufficient distance that there was no likelihood of contact.

Evidence:

Video Replay as per link: <http://www.youtube.com/watch?v=iBmXe !Rsr9g> **Exhibit 1**

Report of the Chief Referee, Mr. Gordon Barnes **Exhibit 2**

The Chief Referee focused on the teams of Germany and Italy, who were at the same time competing for the third place and were a half lap behind. After the German and Italian teams finished he went to the video replay and reviewed the incident following the advice of his 1st assistant Mrs. Nina Rau, saw the incident concerning Mr. Knegt and held that such behavior has no place in the sport and was contrary to Good Sportsmanship, thus deserving of a red card. He applied rule 297(5)(a)(iii)(3) of the ISU Special Regulations & Technical Rules Speed Skating and Short Track Speed Skating and issued the Red Card to Mr. Knegt individually. Mr. Knegt had already left the ice and gone to the changing rooms. The Chief Referee, therefore, followed the skater and showed him the red card where he was in the changing rooms. The Chief Referee then met Mr. Knegt's Team Leader and Coach on the way back to the rink and advised him of the decision.

Evidence:

Report of the Chief Referee, Mr. Gordon Barnes **Exhibit 2**

IV. Law

1. Admissibility of the Statement of Complaint

1.1. The Interested Member impeaches the procedure which the Chief Referee and the Short Track Speed Skating Technical Committee (TC) have taken after the Men's 5000 m relay race. The Chief Referee and the TC allegedly did not follow the Rule 297 (5 and 7) by not involving the national association KNSB. Thus the complaint to the ISU Disciplinary Commission would be inadmissible.

1.2. The complaint might also be inadmissible because it infringes the legal principle “**ne bis in idem**” (literately translated: not twice in the same thing). This is a legal doctrine to the effect that no legal action can be instituted twice for the same cause of action. As the Chief Referee after consulting the Technical Committee had shown the skater the red card and excluded him from the competition according to Rule 297 the case might be settled by ISU Office Holders who were the relevant authority for this decision.

1.3. The Complainant has moved provisional measures to immediately suspend the Alleged Offender from participation at the 2014 Winter Olympic Games which will commence in 3 days. Within this short time the panel is unable to clarify whether the conditions provided in Rule 297 were met and whether the legal principle “ne bis in idem” is infringed.

The questions raised above in Paragraph 1.1. and 1.2. may be left unanswered, as the statement of complaint is not justified.

2. The Statement of Complaint and request for specific sanction of exclusion from the Olympic Games is not justified

While it is uncontested by anyone, including the Alleged Offender and his Federation, that Knecht's actions on the ice at the 2014 European Short Track Championships were in violation of the ISU Code of Ethics, especially Article 4 lit a, b and f, the requested sanction by the ISU of suspension from participation in the 2014 Sochi Olympic Winter Games is disproportionate to the action and fault of the skater.

The panel was of the opinion that the skater should make an apology; however, when reviewing documents in this case submitted by the KNSB, it is clear that an apology has already been given.

While the panel has considered the suggestion by the Alleged Offender, that this may be double jeopardy situation since he was given a Red Card at the competition, the panel does not agree because the rules specifically allow for additional sanctions after a Red Card is issued. Notwithstanding that rule, it is also clear in Rule 297 (6) and (7) from the ISU Special Regulations and Technical Rules for Short Track Speedskating, 2012 Edition, that the Rules therein were not followed appropriately.

That rule states that "upon receipt of the Report of the Referee, . . . , the Short Track Technical Committee will decide on any further disciplinary action . . ." The rule goes on to state other procedures that must be followed regarding the Referees Report after a Red Card. The Chief Referee followed the rules exactly with his Report on Red Card and Decision. However, after that the rules were not explicitly followed.

It appears this complaint went immediately to the ISU, through its Counsel, to file a complaint and request a sanction. These intervening steps in Rule 297 are important to ensure that an Alleged Offender's rights to an appeal are not violated. The panel understands the feeling of urgency to get a quick ruling from the panel as the Olympics are about to start. However, that fact alone is not a good reason for not following the ISU Rules which in turn could create an error such as a sanction being given which later would turn out to be inappropriate and cost the Alleged Offender his chance of competing at an Olympic Games simply because the ISU's own rules were not followed. This action could or might create a bigger problem down the line. Time really was not of the essence here because if the rules were followed and the time passed to suspend the Skater from the Olympics, there are plenty events where a sanction could be issued such as the World Championships in Montreal at the end of this season, the European Short Track Championships, World Cups, and World Championships during the 2014-2015 season.

The panel also has to take into consideration that the requested sanction for behavior that occurred during a relay race would affect the entire relay team as it is not an individual event. Such a harsh sanction is not justified against the entire team, considering it is just one individual who is intended to be sanctioned.

But the main reason why the panel is rejecting the motions No. 2 and 3 of the Statement of Complaint is that the requested sanction by the ISU of suspension from participation in the 2014 Sochi Olympic Winter Games is disproportionate to the action and fault of the skater.

For the reasons heretofore stated, while we agree the Skater's actions clearly violated the ISU Code of Ethics, the panel finds that he should be reprimanded for his actions and warned not to engage in similar conduct in the future.

The panel also hopes this opinion, when published on the ISU Website, will be clear notice to all Competitors, Coaches and Team Leaders that the ISU takes very seriously the Code of Ethics and will, depending on the facts, continue to consider serious sanctions in the future.

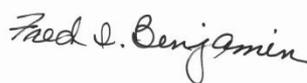
Based on the above considerations the ISU Disciplinary Commission rules as follows:

Decision

1. The Alleged Offender is guilty of a violation of the ISU Code of Ethics.
2. The Alleged Offender is reprimanded and warned to not engage in similar conduct in the future which conduct will cause a more severe sanction.
3. Motion No. 2 and No. 3 of the Statement of Complaint are rejected.
4. All parties bear their own costs.

February 5, 2014


Volker Waldeck


Fred Benjamin


Susan Petricevic