

BEFORE THE ISAF REVIEW BOARD

ISAF CASE 2013/005/RB

IN THE MATTER OF:

DIRK DE RIDDER (NED)

34th AMERICA'S CUP



FURTHER REASONS

1. NOTICE OF APPEAL RECEIVED

- 1.1 On 9 September 2013, the Registrar received a notice of appeal from Mr Dirk de Ridder (NED) concerning his exclusion under Racing Rule of Sailing (America's Cup Edition) 69 from the 34th America's Cup.
- 1.2 Mr de Ridder requested urgent consideration of his appeal.

2. APPOINTMENT OF PANEL

- 2.1 The Chairman appointed the following panel of the Review Board to determine the appeal:
 - (a) Dieter Neupert (SUI) – Chairman
 - (b) Balazs Hajdu (HUN)
 - (c) Peter Hall (CAN)
 - (d) Arve Sundheim (NOR)
 - (e) Lorenz Walch (GER)

3. CONSIDERATIONS

- 3.1 The Board considered in making its decision:
 - (a) the decision of the International Jury of the 34th America's Cup concerning Mr de Ridder (Jury Notice 116);
 - (b) the Notice of Appeal and submissions from Mr de Ridder's counsel, including supporting statements from Mr Henderson and Mr Caldwell.
 - (c) the requirements of the Rules of Procedure; and
 - (d) the applicable Rules and Regulations:
 - i) the Protocol governing the 34th America's Cup;
 - ii) the Racing Rules of Sailing (America's Cup edition);
 - iii) the ISAF Constitution, in particular Article 79; and
 - iv) the ISAF Regulations, in particular Regulation 19 (Eligibility Code).

4. INITIAL DECISION

- 4.1 In light of the urgency of this case, the Review Board issued a decision with brief reasons on 12 September 2013. In that decision, the Board was of the unanimous opinion that it did not have jurisdiction to grant Mr de Ridder's request and accordingly dismissed the appeal.

5. FURTHER REASONS

- 5.1 This decision sets out the further and more detailed reasons of the Review Board.
- 5.2 Article 79.1 of the ISAF Constitution concerns "eligibility" and this is defined in the Article as:
"In these Articles, the Regulations and any sailing activities governed by them, eligibility means the status required to enter events as generally set out in the Eligibility Code contained in the Regulations or in any documents governing any Class or Event which are of a similar nature of intent."
- 5.3 Mr de Ridder's eligibility was not suspended or denied – he was still entitled to enter sailing events and it was not within the jurisdiction of the International Jury of the 34th America's Cup to suspend this right (nor did it seek to do so).
- 5.4 In particular, the Review Board notes that Mr de Ridder was eligible to enter the 34th America's Cup and did so. It was the finding of gross misconduct, and the subsequent penalty, which led to his exclusion from the event. The decision of the International Jury to exclude Mr de Ridder is not a suspension of eligibility – it was exclusion from an event he has already entered under the powers contained in RRSAC 69.
- 5.5 Decisions affecting Competition Eligibility and/or ISAF Eligibility (as defined in the ISAF Eligibility Code – ISAF Regulation 19) can only be made by an ISAF Member National Authority or by ISAF itself. The decision on whether or not Mr de Ridder will have his eligibility suspended has not yet been taken by either his MNA or ISAF (acting through its Disciplinary Commission).
- 5.6 The report made by the International Jury to ISAF and his MNA must now be considered by the MNA and the ISAF Disciplinary Commission. Any further penalties imposed by them, which may include a suspension of Competition Eligibility and/or ISAF Eligibility, may then be appealed to the Review Board.
- 5.7 The Review Board also notes that the decisions of an international jury properly constituted are non-appealable (see RRSAC 70.5) and a competitor may not resort to any court or tribunal in respect of the jury's determinations (see RRSAC 3). These rules are expressly accepted by competitors when they enter events (see RRSAC 3).

**Dieter Neupert
Chairman**

ISAF Review Board

3 October 2013