

ADR**SPORT**RED ARBITRATION

ADR 03-0024 ORDINARY
DIVISION

BETWEEN:

JEFF TODD
ROYAL MILITARY COLLEGE ("RMC")

CLAIMANTS

- and-

CANADIAN INTERUNIVERSITY SPORT ("CIS")

RESPONDENT

JANE H. DEVLIN

SOLE ARBITRATOR

LARRY TODD, FOR JEFF TODD

KELLY NOBES, FOR RMC

TOM HUISMAN, FOR CIS

This arbitration concerns a decision of the CIS Eligibility Committee under CIS policy 40.20.2 denying an appeal for relief from eligibility rule 40.10.5.2.2 for compassionate reasons. Rule 40.10.5.2.2 provides as follows:

40.10.5.2.2 A student-athlete, who transfers from one Canadian Interuniversity Sport member institution to another member institution, must not participate for a period of one year in the recognized sport of Canadian Interuniversity Sport in which such athlete participated at the previous Canadian Interuniversity Sport institution in order to be eligible for Canadian Interuniversity Sport participation.

The claimant, Jeff Todd, graduated from the University of Toronto in the spring of 2003 having completed an Honours degree in history. During his first, third and fourth years at the University of Toronto, Mr. Todd played for the Varsity Blues ice hockey team. In the fall of 2003, Mr. Todd enrolled in a two-year Masters program in defence policy at RMC. The evidence indicates that this program is not available at the University of Toronto and, apart from RMC, is offered at only one other member institution in Canada. Based on the application of CIS rule 40.10.5.2.2, which was referred to as the "transfer rule", Mr. Todd was determined to be ineligible to participate on the RMC ice hockey team for a period of one year from the time he played on the University of Toronto team. RMC appealed for relief from the transfer rule under CIS policy 40.20.2 which provides that a member institution may seek relief from any CIS eligibility rule, on behalf of an athlete, for compassionate reasons. The appeal was denied by the CIS Eligibility Committee in a written decision dated September 23, 2003, which provides as follows:

The Committee does not consider the circumstances in this case to be of such a compelling nature that a waiver of CIS Rule 40.10.5.2.2 is justified.

In rendering its decision, the Committee notes that at the 2003 AGM, the CIS membership defeated a proposal that would have permitted a one-time waiver of rule 40.10.5.2.2 for student-athletes who graduate from one school and wish to pursue another program of study that is not available at the school from which they have graduated.

As Mr. Todd's appeal was not based on compassionate grounds beyond the unavailability of his chosen postgraduate program at the UofT, a ruling in support of the appeal would have been in direct opposition to the wishes of the CIS membership as expressed at the 2003 CIS AGM and as articulated in the respective Regulation.

The appeal is denied. For confirmation, Mr. Todd is eligible to participate in training and practice sessions with RMC, however, he cannot participate on behalf of RMC in exhibition or league competition until one year after his last participation with the UofT.

The parties subsequently agreed to submit the dispute to arbitration under the ADRsportRED Program. A pre-hearing telephone conference was held on November 18, 2003 and the hearing was held by telephone conference on November 20, 2003.

During the hearing, essentially two grounds were advanced to support the request for relief from the transfer rule on compassionate grounds. The first relates to certain information provided to Mr. Todd in the fall of 2002 regarding his eligibility to participate in ice hockey in the event that he were to pursue graduate studies at an institution other than the University of Toronto. In this regard, Mr. Todd testified that sometime in the fall of 2002, he raised the issue of his eligibility with an individual in the office of the Athletic Director at the University of Toronto. Mr. Todd also testified that he did not get a direct response to his inquiry but was provided with a booklet summarizing the CIS rules and advised to discuss the matter with someone in the ice hockey organization. As a result, Mr. Todd approached Dave Lemanowicz, an Assistant

Coach with the Varsity Blues for approximately two years, who indicated that he did not believe the transfer rule would apply in Mr. Todd's situation. However, Mr. Lemanowicz also suggested that Mr. Todd verify the matter and Mr. Todd acknowledged that in view of academic demands at the time, he did not do so.

In late 2002, Mr. Todd also spoke with Kelly Nobes, the ice hockey Coach at RMC, and Mr. Nobes agreed that it was not until May or June, 2003 that he informed Mr. Todd that under the transfer rule, he would not be eligible to participate on the RMC ice hockey team for a period of one year. Mr. Nobes explained that prior to that time, it was his understanding that the transfer rule applied to student athletes transferring from one member institution to another during an undergraduate program and that it was only when he spoke to an Ontario University Athletics eligibility representative in May or June, 2003, that he learned that the transfer rule applied to Mr. Todd. By that time, Mr. Todd had been accepted as a student at RMC.

The second ground advanced in support of the request for relief from the transfer rule relates to the fact that Mr. Todd completed an undergraduate degree at the University of Toronto and the graduate program in which he is enrolled at RMC is not available at that institution. As noted previously, the evidence indicates that apart from RMC, the program is offered at only one other institution in Canada. In the circumstances, it was contended that Mr. Todd should not be penalized either academically or athletically.

As noted previously, the CIS Eligibility Committee denied the request for relief from the transfer rule on behalf of Mr. Todd under CIS policy 40.20.2. Although the Committee's decision did not make direct reference to the

first ground advanced in support of the request for relief from the rule, the evidence indicates that while Mr. Lemanowicz expressed the view that the transfer rule would not apply to Mr. Todd, he advised Mr. Todd to verify the matter. Mr. Todd acknowledged that he did not do so. Mr. Todd also signed a form indicating that he had read and understood the rules and although he clearly had a question regarding his eligibility to participate in ice hockey at an institution other than the University of Toronto, he did not take steps to verify the information provided by Mr. Lemanowicz even though he was advised to do so. In the circumstances, therefore, I find that the information provided to Mr. Todd regarding the applicability of the transfer rule does not support relief from the rule for compassionate reasons.

As to the second ground advanced by the Claimants, the transfer rule refers to a student athlete who transfers from one CIS member institution to another member institution. There is no exception or qualification for graduate students as there is in the case of the rule regarding course load requirements. Moreover, at a recent annual general meeting of CIS, a motion, which would have permitted a one-time waiver of the transfer rule for a student athlete who graduated from one institution and wished to pursue another program of study that was not available at the institution from which the student graduated, was defeated. "Another program of study" would certainly include a Masters program and, accordingly, it is clear that the rule was intended to apply to a student such as Mr. Todd.

Although Mr. Todd contended that in denying the request for relief from the transfer rule, the Eligibility Committee fettered its discretion by placing undue emphasis on events which occurred at the recent CIS annual general

meeting, CIS policy 40.20.2 allows for relief from an eligibility rule for "compassionate reasons". This term would appear to apply to some sympathetic circumstance not expressly contemplated by the rule which would make its application particularly onerous. In this case, however, Mr. Todd relies on the fact that he completed an undergraduate program at the University of Toronto and the Masters program in which he is currently enrolled at RMC is not available at the University of Toronto. As noted above, that situation is clearly intended to be covered by the rule and, in these circumstances, I find that the CIS Eligibility Committee could properly conclude that the situation was not sufficient to warrant relief from the transfer rule for compassionate reasons. In making this finding, it must be noted that this case does not turn on my view of the transfer rule but instead, regard must be had to the intent of CIS policy 40.20.2, taking into account the scope of the transfer rule established by CIS.

As to rule 40.10.5.2.4, which was also referred to by Mr. Todd, that rule provides that an athlete who is registered at a post-secondary degree institution which has discontinued the undergraduate program in which the athlete was registered, shall be allowed to transfer to a member institution and participate immediately when the institution cancels the undergraduate program. Although Mr. Todd submitted this rule ought to provide guidance as to the manner in which discretion should be exercised under CIS policy 40.20.2, it is noteworthy that there is no similar provision for a student who graduates from one member institution and enrolls in a graduate program at another institution which is not offered at the institution from which the student graduated. Moreover, although CIS policy 40.20.2 allows for relief from any eligibility rule, which would include the transfer rule, relief is limited to "compassionate reasons" and, given the scope of the rule, I cannot conclude that the CIS Eligibility

Committee exercised its discretion improperly by denying relief to Mr. Todd.
Accordingly, the claim is dismissed.

I shall remain seised if there is any issue as to costs and for
purposes of rule RA-22 of the ADRsportRED Code.

DATED AT TORONTO, this 24th day of November, 2003.

"Jane H. Devlin"
Sole Arbitrator