

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

HOPE SOLO,	)	
	)	
Complainant	)	
	)	DECISION
v.	)	ON
	)	MOTION TO DISMISS
UNITED STATES	)	
SOCCER FEDERATION,	)	
	)	
Respondent.	)	February 21, 2020

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**I. BACKGROUND**

1. This matter was commenced on January 29, 2018, when Hope Solo (“Solo” or “Complainant”) filed a Section 10 Complaint with the United States Olympic & Paralympic Committee (“USOPC”) against the United States Soccer Federation (“USSF” or “Respondent”).
2. The matter was originally dismissed for the failure to exhaust remedies. After an appeal before the American Arbitration Association, the Complaint is back before the Section 10 Hearing Panel.
3. At the Parties joint request and in accordance with the September 17, 2019, Scheduling Order, the Hearing Panel allowed Solo to amend her original Complaint.
4. Solo filed the Amended Complaint on October 31, 2019.
5. On December 2, 2019, USSF submitted a Motion to Dismiss the Amended Complaint. Solo submitted a Response in opposition of the Motion to Dismiss on December 16, 2019, and USSF submitted a Reply in support of the Motion to Dismiss on December 30, 2019.
6. Oral argument on the Motion to Dismiss was held telephonically on January 14, 2020.

## **II. THE AMENDED COMPLAINT**

7. In the Amended Complaint, Solo alleges that USSF is not in compliance with the Ted Stevens Olympic and Amateur Sports Act (the “Act”) and the USOPC Bylaws on the following counts:

- i. USSF’s grievance procedure violates Section 220504(b)(2)(B) of the Act and Section 8.8.1 of the USOPC Bylaws by failing to include 20% athlete representation on its hearing panels;
- ii. USSF violates Section 220522(a)(5) of the Act by failing to be autonomous in its decision making;
- iii. USSF violates Section 220524(3) of the Act by failing to keep athletes informed of its policy decisions and USSF violates Section 8.7(n) of the USOPC Bylaws by failing to be financially transparent and accountable to its members;
- iv. USSF violates Section 220524(1) of the Act by failing to be responsible to the person and amateur sports organizations it represents;
- v. USSF violates Sections 220524(1) and 220524(6) of the Act because of its inequitable treatment of women members; and
- vi. USSF violates Section 220524(1) of the Act by failing to promote and develop soccer for all persons

8. Solo requests that USSF be placed on probation for 180 days in order to correct any deficiencies that caused or contributed to the alleged violations.

## **III. USSF’S MOTION TO DISMISS**

9. In USSF’s Motion to Dismiss, USSF’s argues that the Amended Complaint should be dismissed in its entirety because it was not filed by the deadline established by the Hearing Panel.

10. If the entire Amended Complaint is not dismissed for Solo’s failure to timely file, USSF submits that the claims related to (i) the inequitable treatment of the National Women’s Soccer League (“NWSL”), a women’s professional league, and (ii) athletes with cerebral palsy, should be dismissed on the merits.

11. Additionally, USSF argues that the Amended Complaint be dismissed or stayed to the extent it raises issues currently pending in federal court.

12. In response, Solo argues that the Amended Complaint was filed timely. And, if the Hearing Panel finds otherwise, that a dismissal for a one day filing delay would be a harsh outcome.

13. Additionally, Solo contends that the issues related to (i) the inequitable treatment of the NWSL and (ii) athletes with cerebral palsy, allege sufficient facts to support a claim.

14. Lastly, Solo requests to proceed on issues in the Section 10 proceeding despite pending federal litigation.

#### **IV. DETERMINATION**

15. It is the determination of the Hearing Panel that USSF's Motion to Dismiss is denied in part and granted in part.

16. The Hearing Panel fully considered all arguments, from the various pleadings and oral argument and provided appropriate weight to all evidence presented in making this determination.

17. All members of the Hearing Panel reviewed and approved this written Decision.

#### **V. REASONING**

##### **A. Failure to Timely File**

18. In determining whether to dismiss the Amended Complaint for not being timely filed, the Hearing Panel considered: (i) the directive of the Scheduling Order, (ii) any excuse on the part of Solo, and (iii) the proportionality of the implications of dismissing the Amended Complaint, taking into account all the circumstances related to these proceedings.

19. First, the September 17, 2019, Scheduling Order clearly stated that the deadline for Solo to file the Amended Complaint “shall” be October 30, 2019, if USSF did not challenge the AAA award. Solo did not comply with the filing deadline.

20. Second, Solo had no valid excuse for missing the deadline. Further, she never requested an extension with the Hearing Panel, nor did she reach out to USSF requesting an extension.

21. With no excuse being provided for the failure to comply with the Scheduling Order deadline, along with the apparent disregard for adhering to strict deadlines in administrative proceedings, the Hearing Panel was inclined to dismiss the Amended Complaint.

22. However, considering the inequities of dismissing the Amended Complaint, the Hearing Panel’s obligation to provide an effective dispute resolution service, and the minimal delay the late filing caused, the Hearing Panel denies the Motion to Dismiss as it relates to the untimely filing.

23. However, the Hearing Panel reminds all Parties that its rules and deadlines are to be respected and followed. Section 10 orders are mandatory and missing deadlines will not be tolerated in the future.

#### **B. Claims relating to the treatment of women participating in the NWSL**

24. The Hearing Panel agrees with USSF that the claims related to the NWSL should be dismissed as insufficient facts have been plead thus far.<sup>1</sup>

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<sup>1</sup> Because the Hearing Panel bases its decision on this reasoning, it makes no determination at this juncture whether Section 220524(6) of the Act applies to the professional leagues of the sport of soccer for which USSF is recognized, an argument raised by Solo.

25. Section 10.2 of the USOPC Bylaws requires a Section 10 complaint to contain “factual allegations” along with “supporting evidence or documentation forming the basis of the complaint.” Here, the Hearing Panel believes that these specific allegations are unsupported.

26. The Hearing Panel finds that the statements in the Amended Complaint are conclusory in nature.

27. The Hearing Panel allows Solo to cure these defects and reserves judgment on the merits if additional facts are later plead.

28. The Hearing Panel grants the Motion to Dismiss on the inequitable treatment of the NWSL professional league claim without prejudice.

**C. Claims relating to the support of cerebral palsy athletes**

29. The Hearing Panel also agrees with USSF that the claims related to cerebral palsy should be dismissed as insufficient facts have been plead thus far.

30. The Hearing Panel finds that Amended Complaint lacks sufficient factual detail on this topic whereas it only sets forth general conclusory statements. The Amended Complaint is sparse at best in respect to these claims.

31. The Hearing Panel allows Solo to cure these defects and reserves judgment on the merits if additional facts are later plead.

32. The Hearing Panel grants the Motion to Dismiss on the cerebral palsy claim without prejudice.

#### **D. Claims pending in federal court**

33. The Hearing Panel determines that in the best interests of judicial economy, to simplify the issues, and without any compelling justification as to the urgency of having these claims heard, the claims in the Amended Complaint related to (i) equitable treatment of the U.S. Women's National Team ("USWNT"), (ii) the unsafe working conditions caused by the "turf", and (iii) the North American Soccer League ("NASL") will be stayed pending the outcome of the federal court proceedings.<sup>2</sup>

34. The standards of NGB compliance and recognition and remedies sought under the Act and the USOPC Bylaws are different than violations of other federal statutes. The Hearing Panel recognizes that if violations are found in the federal court proceedings, they are not controlling in this proceeding and as a general matter may not have bearing on whether a sports organization is fulfilling its obligations as an NGB.

35. Despite this, the Hearing Panel believes that this is a unique case where the rulings in the federal court proceedings could be informative to the issues raised in the Section 10 proceeding. Those rulings could have an "impact on the issues" in the present Section 10 case and thus having the federal cases proceed first could promote judicial economy.

36. Additionally, Solo presented no compelling justification as to the urgency of having these claims heard prior to rulings in the federal court proceedings.

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<sup>2</sup> The three federal proceedings are: (i) *Solo v. U.S. Soccer Federation, Inc.*, Complaint (Dkt. 1), No. 3:18-cv-05215 (N.S. Cal. Aug. 24, 2019), (ii) *Morgan v. U.S. Soccer Federation, Inc.*, Complaint (Dkt. 1), No. 2:19-cv-01717 (C.D. Cal. Mar. 8, 2019), and (iii) *North American Soccer League, LLC v. U.S. Soccer Federation, Inc.*, Complaint (Dkt. 1), No. 1:17-cv-05495 (E.D.N.Y. Sept. 19, 2017).

37. Accordingly, the Hearing Panel denies USSF's request to dismiss these claims, but grants USSF's request to stay the claims of: (i) inequitable treatment of the USWNT, (ii) the unsafe working conditions caused by the "turf", and (iii) the NASL claims.

## **VI. RULING**

38. USSF's Motion to Dismiss the Amended Complaint in its entirety is denied.

39. USSF's Motion to Dismiss the Amended Complaint is hereby granted without prejudice for the following two issues, absent any refiling:

- a. The alleged inequitable treatment of the NWSL
- b. The alleged inequitable treatment of athletes with cerebral palsy

40. The following three issues will be stayed until they have been decided in federal court:

- a. Inequitable treatment of the USWNT
- b. the unsafe working conditions caused by the "turf"
- c. NASL claims

41. Solo has an ongoing obligation to update the Hearing Panel as to the status of the following cases pending in federal court: Solo's Equal Pay Action, USWNT Class Action and the NASL Action.

42. All other claims in the Amended Complaint not dismissed or stayed in this Decision will proceed forward to a hearing on the merits.

43. USSF has thirty (30) days to submit an Answer to the Amended Complaint on the active claims, due by 5pm MT on March 23, 2020.

## **VII. ORDER**

44. It is so ordered.

Dated this 21st day of February, 2020.

A handwritten signature in blue ink, appearing to read 'Bob Wood', written over a horizontal line.

Bob Wood, Chair

Alex Natt, Panel Member

Mark Ladwig, Panel Member