



Arbitration CAS ad hoc Division (O.G. Sydney) 00/002 Samoa NOC and Sports Federation Inc. / International Weightlifting Federation (IWF), award of 12 September 2000

Panel: Mr. Michael Beloff QC (England), President; Justice Tricia Kavanagh (Australia); Prof. Richard McLaren (Canada)

Weightlifting

Adoption by the IF of a suspension imposed on an athlete by a national federation

In the case where a decision of a national federation is endorsed by the international federation concerned and “extended” on the international level, the decision made by the international federation no longer has any weight in law if the “national” decision is set aside (by a state court), because the foundations of the “international” decision are removed.

This is an appeal by the Claimant (“NOC”) against a decision of the Respondent (“IWF”) to support the suspension of Ofisa Junior Ofisa (“Ofisa”), ordered by the Samoan Weightlifting Federation (“SWF”), preventing him from participating in the Olympic Games in the 85.0 kg class. At issue, then, is the ability of Ofisa to participate in such competition.

In May 2000 Ofisa competed in Oceania – Commonwealth and South Pacific Weightlifting Championships in Nauru. He won three gold medals and was selected to represent Samoa by the Samoan NOC (“NOC”) as appears from a form for confirmation of participation signed by the NOC dated 18 May 2000.

Thereafter allegations were made that Ofisa had sex with a female minor in Nauru. There has been no charge, no arrest, no extradition proceedings (see the letter dated 24th July 2000 from the Samoan Ministry of Foreign Affairs to the President of the NOC), and Ofisa has denied the allegations in affidavit form.

By letter dated 23rd May 2000, the Samoan Weightlifting Federation (“SWF”) informed IWF that Ofisa was suspended as a member of SWF until 7th June 2001 “due to serious misconduct at the recent Oceania Weightlifting Championships”. We do not have a copy of the relevant constitution or rules of the SWF, but it is accepted that the SWF enjoyed powers to suspend a weightlifter for misconduct at the material time.

On 1st September 2000, Dr. Ajan, Secretary General of the IWF, circulated a document to, inter alia, NOC that IWF had, in accordance with its constitution, adopted SWF's decision of Ofisa's

suspension and extended it to the Sydney Olympics (the word “extended” was not wholly appropriate: “endorsed” would be preferable).

On 6th September 2000 by letter NOC invited the Sydney Organizing Committee for the Olympic Games (SOCOG) to “proceed with accreditation of (Ofisa) while injunction proceedings awaited”.

By a further letter dated 6th September 2000 IWF repeated the substance of its letter of 1st September 2000.

On 7th September 2000 Ofisa instituted injunction proceedings in Samoa against JJW Wallwork (the President of SWF) and SWF, both of whom were subject to its jurisdiction, seeking an order in effect lifting the suspension on grounds of misconstruction of the SWF constitution, taking into account irrelevant matters (the suggestion being that Ofisa was penalised because he did not support Wallwork in elections to the NOC), breach of both the main rules of natural justice, malice and disproportionate penalty.

Although the Court order (see below) does not state that the Respondents to the motion were present, the letter from Ofisa's solicitors to the NOC dated 9th September states: “*The hearing of the Motion was before the Honourable Chief Justice in open court and the Respondent had their lawyers present to argue their case*” and the IWF accepted that such a lawyer *was* present, although they commented on the shortness of the notice given.

On 8th September 2000, the Samoan Supreme Court made the following interim order:

“THAT the First Respondent its officers and or its agents, and the Second Respondent and or his agents are restrained from:

- a) continuing to impose or enforce the suspension of the Applicant as a member of the Samoa Weightlifting Federation (Incorporated);*
- b) continuing to impose or enforce the suspension of the Applicant to compete at international weightlifting competitions and in particular the Sydney Olympic Games.*
- c) contacting the International Weightlifting Federation and or its agents in connection with the suspension of the Applicant by the said organization”*

(“the interim order”).

There is no evidence that the Respondent have to date sought to set the interim order aside.

On 7th September 2000, NOC appealed to CAS against the decision of IWF of 1st September 2000.

On 8th September 2000, NOC reappealed to CAS stating that: “Since Court order has lifted the suspension of [Ofisa], the only cause of action that IWF “has taken” (*sic* but presumably “can take” was intended) is likewise to lift its endorsement of said suspension of Ofisa”.

On 9th September 2000, NOC renewed its appeal to CAS for the third time.

The IWF adheres to its earlier decision.

LAW

1. These proceedings are governed by the CAS Arbitration Rules for the Games of the XXVII Olympiad in Sydney (the “ad hoc Rules”) of CAS enacted by the International Council of Arbitration for Sport (“ICAS”) on 29 November 1999. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 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 Article 7 of the ad hoc Rules.
2. The ad hoc Division has jurisdiction over NOCs by reason of Articles 4.1, 31 and 74 of the Olympic Charter and over IFs by reason of Articles 4.3, 29, 30 and 74 of the same instrument. In short, by reason of the benefits which accrue to each type of organisation by reason of their recognition by the IOC; each can be deemed to have subscribed to the arbitration clause in Article 74. This conclusion is fortified by the undertaking of each to promote the Olympic Charter in the particular manner set out in it.
3. Under Article 17 of the 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.”*
4. According to Article 16 of the ad hoc Rules, the Panel has *“full power to establish the facts on which the application is based.”*
5. The applicable regulations provide, so far as material, as follows:
 - a) **Olympic Charter**
Rule 45: Eligibility Code
To be eligible for participation in the Olympic Games a competitor must be ... entered by his NOC.
(This endowed the NOC with unique powers of selection)

b) **Samoa National Olympic Committee Constitution**

...

Article VIII: Control of teams

2. *Selection to Games and control of teams*

- (a) *The Federation shall have the sole power to select and approve entries for the Olympic Games and other sports Festivals associated with Olympic Movement.*

(This complements the Olympic Charter in terms of the NOC's power of selection).

c) **IWF Constitution**

...

16. National Federations

16.1 *National Federations are the recognised governing national bodies of weightlifting who, by affiliation constitute the membership of the IWF.*

...

19. Disciplinary actions and penalties

...

19.2 *Athletes or officials suspended by the IWF or by their National Federation shall be considered suspended by the IWF and by all the affiliated National Federations.*

(This obliged the IWF to uphold a [valid] suspension of the SWF.)

6. The IWF decision expressly assumed the validity of the SWF decision to suspend: the letters of 1st September and 6th September both refer to the adoption of the SWF decision.
7. On the evidence before us there were and are arguable grounds to challenge the validity of the SWF decision. A failure to accord Ofisa any kind of hearing as well as apparent bias on the part of the effective decision maker, if established, makes it fatally flawed.
8. It is, however, unnecessary for us to form a concluded view about either the way in which the SWF decision was reached or the legal consequence thereof. The Supreme Court of Samoa has set the suspension aside until further order. There is no reason for us not to accept the interim order at face value. It was for that reason that we rejected an application on behalf of the IWF to adduce evidence said to be relevant to the allegations against Ofisa. To have entertained such evidence would necessarily have involved going behind the order of the Samoan Court (in this instance the Chief Justice). It is the Samoan Court to which such evidence should have been (or should to) addressed.
9. Although the Samoa Court order does not bind the IWF directly, it indirectly affects it, since if the SWF decision is set aside, the foundations of the IWF decision are removed. The IWF decision required the SWF decision to be valid: the Samoan Court has held that it is *not* to be

treated as valid. That decision which the IWF purported to adopt (and to continue to adopt) no longer has any weight in law.

10. The IWF decision is not supported on any other ground. Therefore we find that the decision of the IWF must be set aside. The IWF have made no independent examination of the allegations against Ofisa or come to any conclusion about them independently of the SWF.
11. For the avoidance of doubt, our decision is not to be taken as any precedent should an athlete be validly suspended by an IF: nor should it be read as confirming that an athlete may participate in the Olympic Games where he/she is guilty of serious sexual or other offences. However Ofisa is entitled, until trial, to the presumption of innocence. Other Tribunals than CAS may have to decide in accordance with the appropriate rules and principles which govern *their* jurisdiction, whether the allegations against him have substance or not.

The CAS ad hoc Division rules:

The decision of the IWF that Ofisa Jr. Ofisa cannot participate in the Sydney Olympic Games is no longer effective and is therefore set aside.