



**Arbitration CAS ad hoc Division (O.G. Sydney) 00/012 Rumyana Dimitrova Neykova / International Rowing Federation (FISA) and International Olympic Committee (IOC), award of 29 September 2000**

Panel: Mr. Richard Young (United States), President; Prof. Richard McLaren (Canada); Judge Bola Adjibola (Nigeria)

*Rowing*

*Appeal against a technical decision*

*Accuracy of the technical equipment*

*CAS jurisdiction*

**The game rule is not shielded from the control of judges, but their power of review is limited to that which is arbitrary or illegal.**

The Applicant was a participant in the women's single sculls event Final A held on 23 September 2000 at the Penrith Lakes Regatta Venue.

Following a photo finish, the first place for the women's single sculls was awarded to Ms. E. Karsten from Belarus, time 7:28.141; second place to Ms R. Neykova from Bulgaria, time 7:28.153; and third place to Ms. S. Rutschow-Stompo from Germany, time 7:28.993.

The Sydney Organizing Committee for the Olympic Games (SOCOG) has appointed Swatch as the official time-keeper for the Olympic Games.

The photo finish and timing system used at the rowing regatta was supplied by Swatch.

Following the race the Bulgarian rowing coach, Mr. Neykov, supported by Mr. Renev of the Bulgarian Olympic Committee, made oral representations to the rowing judge. The Panel was informed that they were told that the photo system was correct and, that if a protest was made, it would be dismissed. Other than this discussion, there was no formal follow up on September 23 after the race.

On 24 September 2000, the Chef de Mission and NOC President of the Bulgarian Olympic Committee, Prof. Ivan Slavkov, wrote to His Excellency Mr. Juan Antonio Samaranch, the President of the International Olympic Committee, stating, inter alia, that the Bulgarian Olympic Committee had video evidence that the Bulgarian athlete Ms Neykova was the Olympic champion. He also stated that the "photo finish" presented by the jury was taken a moment after crossing the finish line. He then asked for the ranking case to be reconsidered.

A further letter of the same date was written by the Bulgarian NOC, this time by Mr. Suilen Neykov, to FISA. This letter stated that due to the fact that punctual measuring does not exist at the start line it would be unfair to proclaim a winner with such precision at the finish. The letter asked the FISA officials and jury to re-examine the facts.

Mr. Matt Smith, the Executive Director of FISA, responded to Mr. Sviken Neykov on 26 September 2000. This letter detailed the camera set-up provided by Swatch. It stated:

*“There are two special Swatch photo finish cameras fixed permanently to the structural steel frame of the Finish Tower, one on top of the other. These cameras are located approximately two meters above the top floor of the Finish Tower. The first camera is the official Olympic photo finish camera and the second camera is the back-up camera.*

*The two photo finish cameras are connected to the timing system and Swatch have the ability to show the photo finish camera on a monitor at the judges level of the tower. They are also able to print-out the photo finish on photographic paper”.*

The letter further stated that the SOCOG television cameras were set-up in an approximate manner for the television audience and served no official purpose.

Mr. Baumat of Swatch testified by telephone that the television camera was positioned some 10 centimeters in front of the finish line.

In addition to the official time keeping and recording equipment, there is numerous recording equipment set up by the Sydney Olympic Broadcasting Organisation (Channel 7) for the purpose of providing video footage for television audiences. This equipment is not part of the official timing equipment and, in fact, is not even linked to the Swatch equipment in any way. Its purpose is to enable the television audience to view the sports competition.

The television video of the race produced by Channel 7 was presented in evidence and viewed by the Panel. It presents some information which is in apparent contradiction to the photo finish produced by Swatch.

In deciding a winner in the women’s single sculls on 23 September 2000, the FISA judges relied on the information provided by the Swatch time-keeping equipment.

The Application which instituted the present proceedings was filed with the Court of Arbitration for Sport (CAS) at 13:30 on 27 September 2000. A hearing was conducted on 28 September 2000 at 11:00am.

Ms. Ekaterina Karsten, the Belarus athlete who ranked first and could potentially be affected by the forthcoming decision of CAS and her NOC were both summoned, but chose not to appear at the hearing.

## 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 subject to Chapter 12 of the Swiss Private International Law Act of 18 December 1987 as a result of the express choice of law contained in Article 17 ad hoc Rules and 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. Article 17 of the ad hoc Rules requires the Panel to 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*”.
3. According to Article 16 of the ad hoc Rules, the Panel has “*full power to establish the facts on which the Application is based*”.
4. The jurisdiction of the ad hoc Division is based on the entry form signed by all participants in the Olympic Games and on Rule 74 of the Olympic Charter.
5. The enforceability of the arbitration agreement was also examined and affirmed in the decision of Raguz dated 1 September 2000 of the Court of Appeal of New South Wales, Australia, where it was held:  
*“the various documents signed by the ... athletes and the ... Federation of Australia constituted an interlocking arbitration agreement to submit potential disputes ... exclusively to arbitration, ... before the Court of Arbitration for Sport in accordance with the Code of Sports-related Arbitration”.*
6. The ad hoc Division has jurisdiction over NOCs by reason of Article 4.1,31 and 74 of the Olympic Charter and over IFs by reason of Article 4.3, 29, 30 and 74 of the same instrument and, for FISA, moreover by reason of the CAS arbitration agreement provided in the Federation’s By-Laws. In short, by reason of the benefits which accrue to each type of organisation as a result 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.
7. On behalf of the Applicant it was argued that the television video calls into question the accuracy of the photo finish and indicates the possibility of mechanical error in the photo finish. It was also submitted that the Swatch photo of the race had some anomalous information calling into question the satisfactory operation of the Swatch camera. In further support of these arguments various productions were sought and some were obtained.

8. The relief sought is that, in view of the twelve one thousandths of a second difference between the first and second place finishers and the video tape evidence, this Panel should declare the race a dead heat and award a co-gold medal to the Applicant.
9. The submissions of the Respondent were two-fold. There was an issue of not having exhausted internal procedural remedies which was raised at the outset but abandoned in the course of the proceedings.
10. The second submission was that the action of the judges in determining the matter were within the principles of the M. decision by the CAS ad hoc Division in Atlanta (see below) and could thus not be reviewed by CAS.
11. Further, it was submitted that any deficiency of the mechanical operation of the photo finish equipment had not been established.
12. In a prior decision, *M. v. AIBA* (CAS ad hoc Division, Atlanta, OG 96/006), CAS held that:

*“Traditionally, doctrine and judicial practice have always deemed that game rules, [ie. technical field of play rules] in the strict sense of the term, should not be subject to the control of judges, based on the idea that “the game must not be constantly interrupted by appeals to the judge” ...”*

And further:

*“In comparative law the game rule is not shielded from the control of judges, but their power of review is limited to that which is arbitrary or illegal....”*

The Panel is satisfied that the language cited from the case M. properly reflects the state of the law on efforts to overturn judgment calls and technical decisions by sports officials made during the course of sporting events.

13. The issue presented here, however, is somewhat different to that of a typical official’s field of play decision, in that it is the accuracy of the technical equipment used that is being challenged and not the judgment of any official. Be this as it may, it is not necessary for this Panel to determine to what extent a challenge of a field of play decision based on faulty equipment may be reopened by CAS. Indeed, the Applicant, who has the burden of proof, has not proved that the technical equipment was deficient. Therefore, even if *arguendo* the decision could be reopened, the Application would have to be dismissed for lack of proof.
14. The women’s single sculls competition final was a very close race for first and second place. Article 4 of the By-Laws to FISA Rules 59 to 72 – Duties of the Jury and Rules of Umpiring provides:  
*“The duties of the judges at the finish are as follows:*
  - a) *To determine the order in which the bows of the boats cross the finish line ... close finishes shall be decided by photographs or films. The necessary apparatus shall be operated by specialists who do not form a part of the team of judges at the finish. If the order of finish can be clearly determined by the naked eye, times taken by hand-operated timing equipment may be used. Should it be necessary to use*

*the photo finish, the times shown on the photographs shall be used for all crews in that race. Video systems using less than 100 frames per second as well as ordinary polaroid cameras are not suitable for determining the order of finish. Organizers must provide themselves with equipment specifically designed for the purpose.”*

The photo finish equipment used for the rowing events at these Games was the Swatch “Scan’o’vision” system.

15. The Applicant acknowledges that, on reviewing the photo finish picture produced by the Scan’o’vision system, the race judges could only conclude that the Belarus boat finished first and the Applicant’s boat finished second. Thus, the judgment of the race judges is not being contested. Rather, the Applicant contends that the Scan’o’vision equipment, in reliance upon which the race judges pronounced the Belarus boat the winner, was inaccurate.
16. The primary basis for the Applicant’s attack on the Scan’o’matic photo finish is the finish of the race which was shown on Australian television.
17. The Applicant cannot effectively argue that the television video tape clearly establishes her as the winner of the race. The television footage is inconclusive as to which boat crossed the finish line first. The Applicant’s primary argument related to the television video tape, is that the discrepancy between the body positions of the rowers between the television video and the Scan’o’vision photo finish demonstrates the Scan’o’vision photo finish must be in error.
18. In the opinion of the Panel, the television video of the race casts no doubt on the accuracy of the Scan’o’vision photo finish of the race. The Swatch Scan’o’vision system includes two special purpose cameras which are permanently mounted on the finish line tower exactly on the finish line. One camera is the primary photo finish camera while the other serves as a back-up. The precise location of the cameras on the finish line was established by surveyors and checked on a daily basis. The Scan’o’vision cameras utilise a digital technology which stores electronic data which can later be used to create an image somewhat like a photographic image but much more precise. Both cameras produced identical results for this race.
19. By contrast, the television video tape was the product of an entirely different technology in that video tape is moved across the camera aperture to create an image on tape. It is a slower, less accurate image of what transpired. The television camera which produced the video tape had no official purpose in connection with the race, rather its purpose was to provide general information to the television audience. The television camera was not located on the finish line with precision.
20. In fact, Mr. Baumat, a Swatch Official, presented evidence that it was discovered later in the day after the race that the television camera was located 10 centimetres ahead of the finish line. When this 10 centimetre discrepancy is projected across the 200 metre width of the course, it is not surprising that the television camera’s perspective is different to that of the Scan’o’vision photo finish. The difference in the technology also may have an impact when

the television camera showed the boats crossing the finish line. Considering these differences of the television camera, the Panel is not surprised that the relative position of the boats and the rowing position of the athletes in the boats is different when the television view is compared to the official photo finish. In particular, because of the technology used, the Panel considers the Scan'o'vision photo finish far more reliable.

21. The Applicant attempted to raise doubt concerning other particulars of the Scan'o'vision photo finish. None of these arguments persuaded the Panel that the Scan'o'vision photo finish should be considered unreliable.

**The CAS ad hoc Division rules:**

The application as filed by the Applicant is hereby dismissed.