



Arbitration CAS ad hoc Division (OG Beijing) 08/004 Azerbaijan National Olympic Committee (ANOC) & Azerbaijan Field Hockey Federation (AFHF) v. Fédération Internationale de Hockey (FIH), award of 5 August 2008

Panel: Mr David W. Rivkin (USA), President; Mr Stephan Netzle (Switzerland); Mr Sharad Rao (Kenya)

Field Hockey

Olympic Games

Discretionary power of IFs to adopt the reasoning of their judicial commission and not to appeal before the CAS in a doping matter

An International Federation does not have the obligation to appeal every time its own internal body decides after a review of the facts not to issue a sanction in a doping matter. The Federation must have the discretion to adopt the reasoning of its Judicial Commission and decide not to appeal.

On 5 August 2008, the Applicants filed an application before the ad hoc Division of CAS, including two requests for preliminary relief. In support of their application, the Applicants rely, in summary, on the following facts and legal arguments.

From 12 to 20 April 2008 one of the three Women's World Hockey Qualifier competitions was held in Baku, Azerbaijan (the "Event").

The winner of the Event would qualify for the Olympic Games.

The final of the Event was a match on Sunday, 20 April 2008, between the team representing the Real Federación Española de Hockey (RFEH) and the team representing the Azerbaijan Field Hockey Federation (AFHF).

The Spanish team won the final 3-2.

On 21 May 2008, the FIH communicated that the A-samples of two players, who competed for the Spanish team, taken during anti-doping tests carried out at the Event showed adverse analytical findings (AAF).

On 4 June 2008, the FIH communicated that the B-samples confirmed the A-samples. In the same communication, the FIH stated that the players concerned had requested a hearing by the FIH Judicial Commission (the "Judicial Commission").

The hearing impacted not only the players but could also have affected the entire Spanish team by virtue of article 11.1 of the FIH Anti-Doping Policy, which reads:

“if more than one team member in a Team Sport is found to have committed an Anti-Doping Rule violation during the Event, the team may be subject to Disqualification or other disciplinary action”.

The FIH requested that the Judicial Commission find that the two players had committed an anti doping rule violation and as a result disqualify the Spanish team from the Event.

The Judicial Commission found that one of the players committed an anti-doping rule violation. However, there was no fault or negligence on her part so no sanction was imposed; the second player was not found to have committed an anti-doping rule violation (the “Decision”).

On 31 July 2008, AFHF, together with the players of the Azerbaijan Women’s Field Hockey team (the “Players”) and the ANOC, filed an application with the ad hoc Division of the CAS.

By decision of 2 August 2008, the ad hoc Division of the CAS dismissed the application filed by the ANOC, the AFHF and the Players on 31 July 2008 (the “Prior Award”). In the Prior Award, the CAS panel found that ANOC, AFHF and the Players did not have standing to bring an appeal of the Decision.

Faced with the absence of standing to bring their own appeal, the Applicants now seek an order to FIH that it bring such an appeal. In Applicants’ application dated 5 August 2008, they make the following requests:

- “- *that it is declared that FIH improperly exercised its discretionary power by not appealing the Decision and, as a consequence, that FIH’s decision not to appeal is annulled;*
- *that it is declared that FIH can only properly exercise its discretionary power by appealing the Decision, and as a consequence, that FIH is ordered to appeal the Decision on or before 6 August 2008 the appeal seeking the same sanctions as the ones requested by FIH before the Judicial Commission.*
- *that FIH is ordered immediately to file before the expiry of the 21-days time limit (article 13.5 FIH Anti-Doping Policy) and on 6 August 2008 at the latest, a pro forma statement of appeal against the Decision with CAS which shall, in case the Panel were to dismiss Applicants’ request on the merits to order FIH to appeal the Decision, automatically be withdrawn by FIH not filing with CAS within ten days following the filing of the statement of appeal the brief required (pursuant to Rule 51 of the Statutes of the Bodies Working for Settlement of Sports-related Disputes);*
- *that as long as FIH’s appeal (as ordered by the Panel on the merits) and the subsequent review de novo of the matter has not led to a final award, ANOC is authorised to enter the Azerbaijan team in the Olympic Games”.*

LAW

1. These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (ICAS) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (the “PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in art. 17 of the CAS 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 art. 7 of the CAS ad hoc Rules.
2. The jurisdiction of the CAS ad hoc Division arises out of Rule 59 of the Olympic Charter.
3. Under art. 17 of the CAS 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 art. 16 of the CAS ad hoc Rules, the Panel has *“full power to establish the facts on which the application is based”*.
5. We adopt the facts as found and described in the Prior Award and repeat them above. This case involves the same parties and the same facts as the Prior Award, and we agree with that panel’s holdings.
6. In order for us to grant the relief sought by Applicants, we would have to find an abuse of discretion by the FIH in not appealing the Decision. The Applicants urge an abuse of discretion because (a) the decision not to appeal is contrary to the position argued by the FIH to its Judicial Commission (where the FIH had sought Judicial penalties for the players); (b) the decision not to appeal discriminates against the Applicants; and (c) the decision not to appeal denies AFHF an opportunity to present its case that the doping charges should be upheld.
7. We reject each of these grounds and hold that the FIH has not abused its discretion. We do not believe that an international federation must appeal every time its own internal body decides after a review of the facts not to issue a sanction in a doping matter. We believe that the federation must have the discretion to adopt the reasoning of its Judicial Commission and decide not to appeal.
8. We are comforted in this position by the fact the FIH Anti-Doping Policy also allows appeals by WADA and the IOC. Thus, an athlete or another who may have an interest has multiple bodies that may decide that an appeal is warranted. All of them have apparently come to the same independent decision not to appeal, and we cannot therefore say that this is an abuse of discretion (If one of them decides to appeal tomorrow, then this request for relief becomes moot in any event.)

9. We also do not believe that a decision not to appeal can amount to discrimination. In every case, if a decision to appeal is made or is denied, another party may be impacted by that decision, but such an impact cannot be said to be discriminatory. It is simply the result of the decision being made.
10. Finally, as the panel held in the Prior Award and as the rules make clear, AFHF has no standing to bring an appeal against the Decision. Therefore, it cannot be an abuse of discretion for the FIH not to create a situation that would effectively give the AFHF an appeal. To hold otherwise would also require a federation to bring an appeal in every case that does not result in a finding of a doping violation.
11. We therefore deny Applicants' application on the merits and its request for this preliminary relief.
12. We also deny the other preliminary relief sought by Applicants. They have presented no basis on which we could order the IOC to permit an extra team to participate in the Olympics, and we are not aware of any. In any event, as the Prior Award made clear, because of the Decision there has not been a finding that two Spanish team members committed a doping violation. Even if there had been such a ruling, it would still be within the discretion of the FIH to decide whether or not to disqualify the entire Spanish team. Because that decision involves yet another level of discretion, we do not believe that Applicants can meet, among others, the requirement for provisional measures of a showing likelihood of success on the merits. In such circumstances, we do not need to examine whether the Applicants meet the other requirements for provisional measures.
13. Finally, Applicants requested a hearing on this application in order to present evidence by an expert witness whose opinion has been presented as part of the application. Because of the bases of our ruling, the Panel does not believe that a hearing is warranted. Even if the Panel accepts all of the evidence submitted by Applicants' expert as true, the FIH's decision not to appeal would still not be an abuse of discretion for the reasons described above.

The ad hoc Division of the Court of Arbitration for Sport rules:

The application filed on 5 August 2008 by the Azerbaijan National Olympic Committee and the Azerbaijan Field Hockey Federation and their requests for preliminary relief are hereby dismissed.