



**Arbitration CAS ad hoc Division (OG Beijing) 08/008 & 009 Italian Olympic Committee & Spanish Olympic Committee v. International Sailing Federation (ISAF), award of 24 August 2008**

Panel: Mr Stephan Netzle (Switzerland), President; Prof. Richard McLaren (Canada); Ms Margarita Echeverria (Costa Rica)

*Sailing*

*Olympic Games*

*Proper application of its discretionary power and of the applicable rules by the ISAF International Jury with regard to the disqualification of a team*

**The ISAF International Jury has correctly applied the relevant rules and not exceeded or abused its discretion when it refused to disqualify a national team from the medal race despite the fact that it did not comply with the provisions regarding Additional Identification, on-board camera and quarantine, since such violation did not have any effect on the outcome of the sporting competition. Under the particular circumstances the Olympic Measurement Committee was entitled to allow replacement of the entire boat instead of substitution of only the damaged items. The restriction regarding the replacement of damaged and undamaged parts must be interpreted in light of the specific circumstances, thereby taking into account the principles of competitive sport.**

The Applicants are the Italian Olympic Committee (the “Italian NOC” or the “First Applicant”) and the Spanish Olympic Committee (the “Spanish NOC” or the “Second Applicant”).

The Respondent is the International Federation for the sport of sailing recognised by the IOC (ISAF or the “Respondent”).

The Interested Party is the Danish Olympic Committee (the “Danish NOC”).

On 20 August 2008 at 8:31 p.m. the Italian NOC filed an application before the ad hoc division of CAS (the “First Application”). Later the same evening, at 9:39 p.m., the Spanish NOC also filed an application before the ad hoc division of CAS (“the Second Application”). Both Applicants are challenging the following decisions reached by the ISAF International Jury (the “Jury”):

- (i) Decision dated 18 August 2008 relating to protests No 66 and No 68;
- (ii) Decision dated 19 August 2008 relating to request for redress No 75.

The Beijing 2008 Olympic Games Sailing Competition includes the sailing class “49er”. The 49er Class Event consists of an opening series of fifteen races and a final medal race (the “Medal Race”). The ten boats with the highest ranking in the opening series qualify to compete in the Medal Race.

The Medal Race was held on 17 August 2008 at the Qingdao Olympic Sailing Center. The ten boats that qualified for the medal race were: Denmark, Spain, Germany, Italy, Australia, United States of America, Brazil, Austria, Great Britain and France.

The incident that has given rise to the present dispute took place prior to the start of the Medal Race. The Danish Team was sailing towards the start line when they broke their mast due to heavy weather conditions. The incident also resulted in additional damage to the mainsail, gennaker and mast step. As a result of the damage incurred, the Danish Team returned to the shore. As alleged by the Danish Team, it was not possible to repair the damaged parts in the available time. Therefore, the Danish Team used the boat of the Croatian Team –which had failed to qualify for the Medal Race– and started the Medal Race only three seconds before the time limit to start the race would expire.

The race was conducted in winds close to the maximum allowed limit for 49er races and in very difficult wave and tidal conditions. Every boat capsized at least once during the race. The Danish Team participated in the Medal Race with a boat bearing the name, number and insignias of the Croatian Team and without a camera on board or being subject to quarantine the night before the Medal Race. The Danish Team was wearing the same bibs they had worn throughout the competition, displaying “DEN”.

The Danish Team finished seventh in the Medal Race. This secured the Danish Team the gold medal. The Spanish Team finished first in the Medal Race (and was awarded the silver medal), the German Team second (bronze medal) and the Italian team fourth (fourth place overall). The Teams of United States of America and of Austria did not finish the race within the prescribed time limit.

The Spanish Team, similar to other sailing teams taking part in the Medal Race, waited onboard until the International Race Committee (IRC) displayed the flag “B” and the unofficial finishing positions of all competitors. As soon as the Spanish Team saw that the boat of the Croatian Team that had finished in seventh place was used by the Danish Team, they informed the IRC within the specified period that they intended to protest. The Italian Team also attempted to indicate their objection to the participation of the Danish Team in the Medal Race.

After coming ashore, at 6:45 p.m., the Danish Team submitted a written request titled “Equipment Substitution Request” to the Olympic Measurement Committee (OMC) and asked the substitution of the Danish boat with the boat of the Croatian Team to be approved. The substitution of the boat was approved retrospectively, subject to ruling, on 18 August 2008 at 9:03 a.m. In its decision, the OMC stated, *inter alia*, the following:

*“In normal circumstances permission would have only been granted to replace the specific damaged items of equipment. The OMC find [sic] that in this instance there was insufficient time to repair and or replace the damaged items of equipment on the DEN 49er. Request approved subject to a Jury ruling on the absence of the onboard camera and incorrect boat and sail markings”.*

During the afternoon of 17 August 2008 the IRC was informed by the OMC that the Danish Team had sailed with substitute equipment. As required by the applicable rules, the IRC filed protest No. 66 at 6:10 p.m. The Spanish Team filed protest No. 68. The two protests were heard together at a hearing held the night of the same day and adjourned until 18 August 2008. On 18 August 2008, at 11.30 a.m. the Jury decided that the protest by the Spanish Team was invalid according to Articles 21.2 and 21.3 of the Sailing Instructions and that the protest of the IRC should be dismissed. The Jury further stated:

*“DEN did not comply with NoR 3/SI 2 and SI 3, and MR 13. However, in accordance with SI 18.7 and following the Jury policy on discretionary penalties for this event, no penalty will be imposed for any of these breaches, because no advantage was gained by DEN”.*

The Jury’s decision was communicated verbally to the representatives of the Spanish Team; however, it was not published or communicated in writing until 19 August 2008.

As a result of the decision, the Italian and Spanish Teams filed protest No. 75 asking for redress of the decision. Both teams contended that the Danish Team was wrongly allowed to compete in the Medal Race and that the decisions issued by the Jury failed to apply and misinterpreted the sailing rules and regulations.

On 19 August 2008 at 11.02 a.m. the Jury denied the protest and decided to take no further action, stating *inter alia* that

*“[...] the jury considered the two rules quoted in the request that were not specifically mentioned in the decision of Cases 66/68. With regards to SI 7, this sailing instruction does not address replacement of equipment. The Jury has reviewed Class Rule C2 and found nothing to cause the jury to believe it made an error. Further, the jury reviewed the entire decision and is satisfied that no error has been made”.*

On 20 August 2008 the Italian NOC and the Spanish NOC filed the First and the Second Application respectively, requesting from CAS the following:

- (i) [F]ind that the Jury misapplied and misinterpreted the sailing rules and provisions*
- (ii) [F]ind that the Jury wrongfully rejected the above mentioned protests and request for redress*
- (iii) [A]s a result vacate and annul the above mentioned Jury decisions*
- (iv) Declare that the Danish team:*
  - a. was not entitled to take place to [sic] the Gold Medal race*
  - b. That in any event it participated breaching the relevant sailing rules with regard to identification of boat, quarantine and camera equipment*
- (v) Disqualify the Danish Team*

- (vi) *As a result reallocate the Olympic medals and relevant prizes and awards as follows:*
- 1st place (Gold Medal) to the Spanish Team*
  - 2nd place (Silver Medal) to the German Team*
  - 3rd place (Bronze Medal) to the Italian Team”.*

## LAW

### Legal framework

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 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in article 14 of the CAS ad hoc Rules, and as a 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 CAS ad hoc Rules.
2. The jurisdiction of the CAS ad hoc Division arises out of Rule 59 of the Olympic Charter.
3. Under article 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. Under article 16 of the CAS ad hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.

### Assignment of the applications to the same Panel

5. Article 11 para.3 of the CAS Ad hoc Rules reads as follows:  
*“If an application is filed which is related to an arbitration already pending before the ad hoc Division, the President of the ad hoc Division may assign the second dispute to the Panel appointed to decide the first dispute. In order to decide upon such assignment, the President of the ad hoc Division shall take into account all the circumstances, including the relation between the two cases and the progress already made in the first case”.*
6. By decision dated 21 August 2008, the President of the ad hoc division decided that the First Application and the Second Application should be heard and decided together by the Panel of arbitrators appointed to deal with the First Application, given that both cases arise out of the same set of facts.

## The Hearing

7. On 23 August 2008 a hearing took place at the premises of the CAS ad hoc division at the Park Plaza Hotel in Beijing.
8. At the end of the Hearing, the parties, after making submissions in support of their respective requests for relief, confirmed that they had no objections to raise regarding their right to be heard and have been treated equally and fairly in the arbitration proceedings.

## Applicable Law

9. The ISAF Regulations are the applicable regulations in the present case. The relevant provisions read as follows.

### Racing Rules of Sailing

[...]

*Part 6 – Entry and Qualification*

#### 77. IDENTIFICATION ON SAILS

*A boat shall comply with the requirements of Appendix G governing class insignia, national letters and numbers on sails.*

[...]

#### DEFINITIONS

[...]

*Rule*

[...]

*(d) the class rules (for a boat racing under a handicap or rating system, the rules of that system are ‘class rules’).*

### Sailing Instructions

[...]

#### 2. ADDITIONAL IDENTIFICATION

2.1 *Each day while racing, the first, second and third boats in series scores at the beginning of the day shall display a yellow, blue and red sticker respectively. The organizing authority will supply the stickers and instructions for their use at the team leaders’ meeting.*

2.2 *Athletes are required to wear bibs provided by the organizing authority. Bibs shall be worn as the outer layer of clothing (over any other item of clothing or equipment). A hole for trapeze/biking devices may be mad*

### 3. CAMERAS AND ELECTRONIC EQUIPMENT

*Boats may be required to carry cameras, sound equipment or positioning equipment as specified by the organizing authority.*

[...]

18.7 *Breaches of instructions 2, 3, 10.3, 13.3, 20, 21.1, 21.2, 21.3, 23, 24, 25, 27 and 28 will not be grounds for a protest by a boat. This changes rule 60.1(a). Penalties for these breaches may be less than disqualification if the jury so decides.*

[...]

19.7 *A boat assigned to compete in the medal race shall make a genuine effort to start, sail the course and finish. A breach of this instruction will not be grounds for a protest by a boat. This changes rule 60.1(a). The penalty for this breach will be ranking the boat tenth in the regatta. If there are two such boats, they will be ranked ninth and tenth, in order of their opening-series ranks, etc.*

[...]

21.2 *Replacements Ashore: Requests for substitution of damaged or lost equipment shall be made to the measurement coordinator for consideration by the measurement committee. Permission will be given only when the committee is satisfied that the item of equipment is severely damaged, not deliberately mistreated, and cannot be repaired satisfactorily. A request shall be made at the first reasonable opportunity on a form available at the protest desk.*

21.3 *Replacements Afloat: When an item of equipment is damaged or lost shortly before a race and is replaced, the boat shall notify the race committee before the warning signal. As soon as practicable after coming ashore, the boat shall comply with instruction 21.2 and the replaced item shall be presented to the measurement coordinator. If the measurement committee decides that the item could have been used in the race or had been purposely damaged by anyone associated with the boat, the measurement committee may request action under rule 69.1(a)”.*

### Measurement Regulations

“[...]

#### 13. Medal Race Quarantine Procedures

13.1 *On completion of the opening series the ten boats assigned to compete in the Medal Race for each event will be quarantined and subject to equipment inspection. Boats which may be eligible following the results of protests shall go to the quarantine area.*

[...]

13.7 *A breach of this Instruction will not be grounds for protest by a boat. This changes RRS 60.1(a). The penalty for a breach of this Instruction will be at the discretion of the International Jury and may include ranking the boat tenth in the regatta. If there are two such boats they will be ranked ninth and tenth, in order of their opening-series ranks, etc”.*

### **International 49er Class Rules**

“[..]

#### *C.2 Equipment*

[...]

#### *C.2.3 MODIFICATIONS*

- (a) *The tiller forward of the rudder stock may be modified.*
- (b) *The hull, wings, daggerboard and rudder blade may be sanded and painted and polished, except that the shape or weight distribution of the items as originally supplied shall not be altered”.*

[emphasis added by the Panel]

### **Notice of Race**

“[...]

#### *3. ADDITIONAL IDENTIFICATION*

[...]

- 3.2 Boats of the 49er and Tornado classes shall carry their national flag on the spinnaker as specified in the Beijing 2008 Olympic Sailing Competition Measurement Regulations.*
- 3.3 Each boat shall carry on each side of the mainsail her national letters, national flag and crew names. These will be supplied by the organizing authority and applied under its direction. No other sail numbers or letters may be displayed. This changes rule G1.1.*

[...]

- 3.7 While afloat, athletes shall wear bibs displaying their national Olympic committee (NOC) code on the outside of all other clothing and equipment.*

#### *4. CAMERAS AND ELECTRONIC EQUIPMENT*

*Boats may be required to carry cameras, sound equipment or positioning equipment as specified by the organizing authority”.*

### **Discussion**

- 10. The questions the Panel needs to decide are:
  - (A.) Does the Italian Olympic Committee have standing to bring this appeal to CAS?
  - (B.) Did the International Jury misinterpret the rules of the ISAF when it dismissed the protests of the Spanish Olympic Committee and the International Race Committee and subsequently the Request for Redress filed by the Applicants?
  - (C.) Is the replacement of an entire boat in the 49er class permitted at all?

A. *Standing of the Italian Olympic Committee*

11. The Respondent disputes that the Italian Olympic Committee has standing in the present case because it did not join the initial protest of the Spanish NOC immediately after the Medal Race in the 49er class which led to the first decision of the Jury dated 18 August 2008. The Italian NOC became involved only when it filed, together with the Spanish NOC, a request for redress against the decision of the Jury. Since it was not disputed that the Italian Team approached the IRC immediately after the Medal Race and expressed its disagreement with the participation of the Danish crew in a boat bearing the insignia of the Croatian Team, and since under the applicable rules, filing a request for redress would not require filing a prior protest, the Panel concludes that the Italian NOC has standing as a full party in this proceeding.

B. *Correct application of the Rules by the International Jury*

12. The Applicants submit that the Jury misinterpreted and incorrectly applied the rules governing the substitution of equipment with regard to Sailing Instructions (SI) 2 (Additional Identification), SI 3 (Camera and Electronic Equipment) and Measurement Regulations (MR) 13.1.
13. SI 18.7 provides the penalties imposed for “breaches of instructions ... may be less than disqualification if the jury so decides”. MR 13.7 provides that a breach of this Instruction will not be grounds for protest by a boat. It then states that “the penalty for a breach of this Instruction will be at the discretion of the International Jury. ...”. The exercise of discretion in either SI 18.7 or MR 13.7 does not require the Jury to disqualify a boat in case of the rule violations that occurred in this case. When deciding upon such violations, the Jury has discretion to determine the appropriate sanction which must also mean there is the discretion not to apply any sanction at all.
14. In assessing the scope of the Jury’s discretion, the Panel finds it useful to take the principles into consideration which the Jury has formulated before the Olympic Games. The relevant part reads as follows:

*“DISCRETIONARY PENALTIES (SI 18.7)*

*The jury has full discretion over penalties for breaches of the sailing instructions listed in instruction 18.7. The penalties may range from no penalty to disqualification. However, the following guidelines should be observed in assessing penalties. The option to impose a penalty less than DSQ shall not normally be used when the jury is satisfied that the breach was deliberate. In such cases the jury may also consider action under rule 2 or 69. Matters to be considered when deciding the appropriate penalty include:*

- (a) Did the breach compromise the safety of competitors or race organisers?*
- (b) Did the boat gain a competitive advantage through her breach?*
- (c) Could the breach bring the sport or the organisation into disrepute?*

- (d) *Did the breach result in damage or injury?*
- (e) *Was the breach deliberate?*
- (f) *Was there a good reason for the breach?*
- (g) *Was anybody inconvenienced?*

*Any penalty must exceed any possible gain and repeated breaches should normally increase the penalty”.*

15. The Panel is called to review whether the Jury has exercised its discretion reasonably and in compliance with its own standards.

(a) *Violation of SI 2 (Additional Identification)*

The additional identification on the hull and the sail (i.e. abbreviation of the boat’s home country, flag, name of the crew members) is contained in the rules to serve primarily the spectators and media who follow the race on the water or through the broadcast of the event. The Spanish NOC submits that the strategy and the tactics of its boat would have been completely different if the crew had been aware that the boat carrying the insignia of Croatia was in fact the Danish crew which was in first position prior to the Medal Race. This might have been true under certain distinctive configuration. However, the Panel finds it difficult to accept: considering the standing of the boats before the Medal Race; the substantial time gap between the Danish crew starting 3 minutes and 57 seconds late behind the other boats at the starting line; and, the severe wind, wave, water and overall weather conditions; that at the start the Spanish Team would have applied any other strategy than trying hard to win the race, if the Danish crew had managed to apply their own insignia. The Panel, therefore, concurs with the Jury that the fact that the Danish crew sailed with the insignia of Croatia did not provide the Danish crew with a competitive advantage, nor did it disadvantage the Spanish or the Italian boat. Nor did the Danish crew have any intention to deceive its competitors by sailing under misleading insignia. In addition, the Respondent has addressed several examples in which boats participated (and were not disqualified) which did not bear the Additional Identification, including an Italian boat.

(b) *Violation of SI 3 (Camera)*

The applicants submit that by not carrying the TV camera (or a dummy of the same size and weight) on board, this was in fact an advantage for the Danish crew, because: (a) its boat was lighter and therefore faster; and (b) the camera did not stand in their way. There is no compelling evidence that the saving of approx. 2.5 – 2.8 kg of dead weight under the particular circumstances did actually constitute an advantage for the Danish crew. On the other hand, it was undisputed that the Danish crew competed in a boat which had been individualized for other sailors and prepared for different wind and water conditions. Considering the entirety of the circumstances, the Panel joins the Jury in its finding that the lack of an on-board camera did not provide the Danish crew with a competitive edge, which is further supported by the fact that the Danes lost considerable time during the Medal Race.

(c) *Violation of Medal Race Quarantine*

The applicants submit that the fact that the Croatian boat had not been kept in the quarantine area overnight before the Medal Race was a severe rule violation and led to a non quarantined boat participating in the race to the disadvantage and discrimination of the other competitors.

It may be true that the Croatian boat could have been modified outside of the quarantine before the Medal Race. However, there is no evidence that any modification had actually been made. To the contrary, upon the Danish crew coming ashore from the Medal Race, the Croatian boat was immediately inspected by the Class Measurer who found the boat to be in accordance with the Measurement Regulations, except for the correct national and sailor Identification and the on-board Camera. Furthermore, the 49er class of sailboat is intended to be one in which the equipment is completely and totally standardized and manufactured by two licensees for the hulls and one for the spars. The Panel agrees therefore with the Jury that the fact the Croatian boat was not kept in the quarantine area before the Medal Race (but was measured immediately upon coming ashore) did not provide the Danish crew with a competitive advantage.

*(d) No arbitrariness, bias or bad faith*

The Panel holds that by abstaining from any sanctions when faced with the violations of SI 2 und 3 and MR 13, the Jury did not violate SI 18.7 and MR 13.7. It conducted a proper legal procedure according to the applicable rules, applied its own guidelines and exercised its discretion relying on the expertise and experience of its members. It also followed the procedural rules and there are no indications whatsoever that the Jury was biased or “conduct[ed] themselves with a lack of good faith or not in accordance with due process” as the standard was found to be and articulated in decision of the CAS ad hoc Division on the occasion of the Olympic Games in Athens 2004 (See CAS OG 04/009).

16. The Applicants assert that with the replacement of an entire boat the Danish crew did not comply with the Rules governing the Equipment and Measurement of the boats competing at the Olympic Games. The assertion is based upon drawing a distinction between equipment (i.e. cables, mast, rudder, sails) and the hull. It is submitted that the relevant rules allowed only replacement of equipment and not of the hull or the entire boat. Furthermore, the rules allowed only replacement of damaged equipment whereas when using another boat, the Danish crew had in fact replaced not only the damaged parts but also undamaged equipment as well, which was not justified by the lack of time for repair.
17. The Panel concurs with the Respondent that the relevant rules consider the hull as being part of the equipment. In particular, the International Class Rules for the 49er class to which the Racing Rules of Sailing refer (see Definitions “Rule” (d)) speak of the hull as a part of the equipment (see, e.g. C 2.3) and make reference to the Equipment Rules of Sailing which also include the regulations for the hull. In fact, no provision has been submitted by the Applicants which indicate that replacement of a hull was generally prohibited. On the other hand, the Respondent and the Danish NOC quoted some events at prior Olympic Games and qualification regattas in which the replacement of an entire hull had in fact been permitted.
18. It is a fact that by using another boat, the Danish crew replaced not only damaged but also undamaged equipment. However, the restriction regarding the replacement of damaged and undamaged parts must be interpreted in light of the specific circumstances, thereby taking also the general principles of competitive sport into account. Such principles include among others the right to compete and indeed the obligation to do so by rule SI 19.7.

19. MR 21 regulates the conditions under which damaged or lost equipment may be replaced. In particular, replacement of equipment requires permission of the OMC and will be granted only *“when the committee is satisfied that the item of equipment is severely damaged, not deliberately mistreated, and cannot be repaired satisfactorily”*.
20. Immediately after the mast of the Danish boat was broken, the Danish coach testified that he tried to find a member of the OMC. When he was unable to do so he informed the IRC and requested a postponement of the Medal Race to allow the crew to repair the damage. No postponement was granted. After the crew had reached the shore and managed to replace their boat with the Croatian boat, the coach requested the representative of the OMC to allow the replacement of the damaged boat. The representative of the OMC advised him that the request would be dealt with on shore after the Medal Race. After the Medal Race, the Danish Team filed a formal request with the OMC. After receiving the request to substitute equipment, the OMC inspected the Croatian Boat, and found it compliant with all rules with the above exceptions. SI 21.2 does not require that permission must be granted *prior* to the substitution, which would anyway have been impossible for reasons beyond the Danish crew’s reach.
21. Replacement of equipment is not only to be understood as the actually damaged part but also parts which are fixed to the damaged part and cannot easily be removed under the actual circumstances. Accordingly, as witness evidence has demonstrated, it has been accepted by the Respondent, that after a breaking in half of a mast, the entire mast together with the undamaged cables and spreaders may be replaced. Since it is always technically possible to separate the damaged parts from undamaged parts if there is sufficient time, the Panel agrees with the Respondent that the definition of what constitutes a damaged part which “cannot be repaired satisfactorily” must necessarily take the time to repair the damage into consideration.
22. In the case, there was no time available to repair the damage. In fact, the only option for the Danish crew, if it was to fulfill its obligation to compete in the Medal Race, was to substitute the damaged part by replacing the entire boat. Only by doing so was the Danish crew able to comply with their obligation to make any efforts to compete in the Medal Race as set out in SI 19.7. The time constraint upon the crew is evident in the fact that the substitute boat only arrived at the start line 3 seconds before it would have been considered not to have started for failing to start within four minutes of the starting gun. The Panel finds it also a remarkable example of Olympic Spirit of the Croatian crew to grant their Danish colleagues such generous support.
23. Considering the facts, that the 49er class is a class with virtually identical boats and that this class is sought to be a competition between sailors rather than between designers and manufacturers, the OMC was right in granting the permission to replace the entire boat thereby allowing the so far dominant team to continue to stay in the competition and to fight out the allocation of the medals on the water instead of in the arbitration room. The Panel finds no violation of all the relevant rules involved in permitting this course of action. Therefore, the Danish crew is declared to have been entitled to take part in the Medal Race.

## **Conclusion**

24. The Panel concludes that the Jury has correctly applied the relevant rules and not exceeded or abused its discretion when it refused to disqualify the Danish Team from the medal race despite the fact that it did not comply with the provisions regarding Additional Identification, on-board camera and quarantine, since such violation did not have any effect on the outcome of the sporting competition.
25. The Panel also concludes that under the particular circumstances the OMC was entitled to allow replacement of the entire boat instead of substitution of only the damaged items.

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

1. The applications filed by the Italian Olympic Committee and the Spanish Olympic Committee on 20 August 2008 are hereby dismissed.
2. The decisions rendered by the International Jury of the International Sailing Federation dated 18 August 2008 and 19 August 2008 are upheld.