



Arbitration CAS 94/123 Fédération Internationale de Basketball (FIBA) / W. & Brandt Hagen e. V., award of 12 September 1994

Panel: Prof. Gérard Rasquin (Luxembourg), President; Mr. Reiner Klimke (Germany); Prof. Bruno Simma (Germany)

Basketball player's dual citizenship

Single sporting nationality

Interpretation of the FIBA Regulations governing the National Status of Players

- 1. The FIBA Regulations governing the National Status of Players provide that a player may have one or more legal nationalities, according to the law of the countries concerned, but that he may, at any time, have only one nationality for basketball purposes (basketball nationality). This concept is solely for sports purposes. No player may have a basketball nationality without having the same legal nationality.**
- 2. Pursuant to the FIBA Rules, if a player has more than one legal nationality, he shall be deemed to have the basketball nationality of the country in which he was born, unless he played basketball in any one of the countries whose legal nationality he holds on or after his nineteenth birthday; in this case he shall be deemed to have opted for the basketball nationality of this country.**

The parties are disputing the basketball nationality of the defendant W.

W. was born on December 29, 1970 in the USA and is the son of a German citizen. He holds American and German nationality as well. Until 23, he played basketball in the USA, first at Columbia High School, New Jersey, then at La Salle University and from September 1989 until June 1993 at Monmouth College, New Jersey. W. is a player of the Bundesliga club Brandt Hagen e.V., which participated during the 1993/1994 season in the Korac Cup.

On August 26, 1993, the German Basketball Federation (DBB), which is the German member of FIBA, required that FIBA examine the basketball nationality of W.

By letter of August 27, 1993, the FIBA answered that it considered W. as having American basketball nationality.

By letter of August 30, 1993, Brandt Hagen e.V. required that FIBA confirm that W. had German basketball nationality and therefore was able to participate as a German player in the Korac Cup.

By fax of August 31, 1993, the FIBA refused to deliver the required confirmation and pointed out once again that W. was considered as having American basketball nationality for competitions of FIBA. By fax of September 3, 1993 to Brandt Hagen e.V., the FIBA confirmed that “*under no circumstances, is he (W.) allowed to play as a German player*”.

By letter of October 11, 1993 to the Secretary General of FIBA, Brandt Hagen e.V.'s lawyers lodged an appeal against FIBA's refusal to consider W. as a German player.

By fax of October 18, 1993, FIBA dismissed the appeal for the reason that it had been filed belatedly.

The defendants instituted legal proceedings against the plaintiff before the Landgericht Munich I, requiring principally that FIBA deliver to W. an official player licence in recognition of his German basketball nationality and, as a subsidiary claim, that W. be admitted to participate as a German player for Brandt Hagen e.V. in the two matches against Levsky Totel Sofia on October 26, 1993 and November 2, 1993. In its decision of October 25, 1993, the Landgericht Munich I dismissed the claim.

The appeal lodged by the defendants against the decision of the Landgericht Munich I was admitted by the Oberlandesgericht Munich on November 2, 1993 and FIBA was ordered to allow W. to participate as a German player in the match against Levsky Totel Sofia on November 2, 1993.

On April 11, 1994, the plaintiff instituted proceedings against the defendants before the CAS. The plaintiff's bill of particulars was to ascertain that the defendant W. had American basketball nationality and therefore could not participate as a player with German basketball nationality in any competition organized by FIBA.

The defendants demanded judgement against the plaintiff and in addition, as a counterclaim, demanded that the defendant W. be delivered definitively a FIBA official player licence in recognition of his German basketball nationality according to article 4 of the Regulations governing the National Status of Players.

LAW

1. The competence of the CAS *in casu* results from the Player Declaration signed by W. and the arbitration agreement signed by Brandt Hagen e.V. and FIBA.
2. Under the terms of article 23 of the Statute and article 29 of the Regulations of the CAS, failing any specific clause in the arbitration agreement, the CAS shall apply Swiss Law.

Under the terms of article 187 of the Swiss Federal Code on Private International Law, the Court of Arbitration shall deal with a case in accordance with the rules of law chosen by the parties, who in the present case chose to apply German law in substance as well as in procedure. Further, the CAS applied the FIBA regulations in force at the time when FIBA's decisions concerning the present case were taken.

3. The plaintiff argued that the defendants' appeal had failed to comply with the period of time set by FIBA regulations. The plaintiff also mentioned that the defendants had omitted to accompany their appeal by a deposit of DM 10,000.--.
4. Both parties assumed that the time period for an appeal against FIBA's decision in the present case was regulated by the articles 12 and 13 of the Regulations governing the National Status of Players.
5. Article 12 provides that appeals may be referred in the second instance to the Secretary General of FIBA except when there is a jury of appeal. His decisions may be subject to appeal by the interested party in the third instance to the Executive Committee of FIBA within 30 days of due notice having been given of the decision.

Further, according to article 13 lit. a, the appeal shall be sent to the Secretariat of FIBA within 15 days of receipt of the first decision. The appeal shall be accompanied by a deposit of DM 10'000.--.

6. With regard to the time for appealing, the CAS agrees with the principle of having articles providing that appeals must be lodged within a certain time period. But, the CAS deems the above-mentioned articles 12 and 13 to be inadequate in the present case.

Indeed, articles 12 and 13 only apply in relation to article 11, concerning administrative and disciplinary penalties imposed in the first instance by the Secretary General of the competent Zone or another person designated by him.

7. It is obvious that the decision taken by FIBA refusing W. German basketball nationality is neither an administrative nor a disciplinary penalty according to article 11 of the Regulations governing the National Status of Players. Therefore, articles 12 and 13 cannot apply to the present case.
8. The CAS considers that the time period regarding the appeal lodged by the defendants is governed by articles 34 and 35 of the FIBA's General Bye-Laws, concerning the Eligibility Commission.

According to article 34, the terms of reference of this Commission shall be (...) the application of the Regulations governing the Eligibility of Basketball Players and the application of the Regulations governing the National Status of Players.

Article 35 further provides the following: It (the Commission) shall act through the Secretary General and its decisions shall have immediate effect with the possibility of appeal by the interested party to the Executive Committee of FIBA within 30 days of receipt of the decision.

9. The FIBA regulations governing the time limits seem rather ambiguous, making it difficult for the appealing party to know which provision does apply and which does not.

Now, the CAS considers that a decision approximately in accordance with the requirements of article 35 was taken at the earliest on October 18, 1993. Indeed, the letters sent by FIBA before October 18, 1993 cannot be considered as a decision of the Eligibility Commission. None of these letters sent to Brandt Hagen e.V. met the formal characteristics that a party generally expects from a decision: e.g. grounds of the decision, indication of the rights to appeal. In addition, FIBA's letters before October 18, 1993 did not make clear that the decision had been taken by the Secretary General, on behalf of the Eligibility Commission.

10. Therefore, the CAS deems that the appeal lodged on October 21, 1993, was admissible with regard to the time limit. At least, given the unclear situation that followed the correspondence between the parties, FIBA should have granted Brandt Hagen e.V. the opportunity to ask for a reinstatement of the proceedings.
11. FIBA further mentioned that Brandt Hagen e.V.'s appeal could not be allowed because the required deposits, i.e. DM 10'000.--, had not been enclosed.
12. Article 35 of the General Bye-Laws does not mention any obligation to make a deposit while lodging an appeal. The deposit is only ordered by article 13 of the Regulations governing the National Status of Players, which does not apply in the present case.
13. With respect to the deposit, the CAS also considers that any regulation regarding deposits should mention what the monies paid by the appealing party are destined for and under what conditions the party may recover them. This opinion is confirmed by the fact that FIBA very recently adapted its regulations governing the deposit, specifically regarding the above point.

In addition, the CAS considers that the amount of DM 10'000.-- has been fixed at an excessive level. Therefore, the appeal could not be dismissed by FIBA for reasons of non-payment of the required deposit.

14. The Regulations governing the National Status of Players provide (article 1.6) that a player may have one or more legal nationalities, according to the law of the countries concerned, but (article 1.7) that he may, at any time, have only one nationality for basketball purposes (basketball nationality). This concept is solely for sport purposes. No player may have a basketball nationality without having the same legal nationality.
15. According to article 4.1, by birth a player may have claim to one or more legal nationalities, derived as follows:

- (a) The country in which he was born,
 - (b) The nationality of his father,
 - (c) The nationality of his mother,
 - (d) By virtue of being a member of a (former) colony or dependency
 - (e) Some other exceptional legal concept.
16. The question whether W. holds American or German basketball nationality has to be examined under article 4.3 of the Regulations governing the National Status of Players, which reads as follows:
- “If a player has more than one legal nationality by virtue of 4.1, he shall be deemed to have the basketball nationality:*
- (a) Of the country in which he was born, or*
 - (b) When he does not have the nationality of the country in which he was born, the next nationality he has according to the order of precedence as set out in 4.1 (a-e),*
- unless*
- i. He surrenders or loses the legal nationality of that country,*
 - ii. He makes application to FIBA to register a change of basketball nationality (section 5),*
 - iii. He plays basketball in any one of the countries whose legal nationality he holds on or after his nineteenth birthday. In this case he shall be deemed to have opted for the basketball nationality of this country unless he has previously established an alternative option with FIBA, by virtue of any of the procedures set out in section 5”.*
17. Both parties are of the opinion that the paragraphs 4.3 i.-iii. apply as well to lit. (a) and (b) and the CAS agrees with this interpretation of the clause.
18. In the present case, it is uncontested that W. has both American and German nationalities, i.e. more than one legal nationality by virtue of article 4.1. It is also uncontested that W. has played basketball in the USA after his nineteenth birthday.
19. According to article 4.3 (a), W. was deemed to have the basketball nationality of the USA, the country in which he was born, unless he played basketball in any one of the countries whose legal nationality he holds on or after his nineteenth birthday (article 4.3 iii).

The CAS deems that the option provided under article 4.3 iii., which applies for both articles 4.3 (a) and (b), can only make sense if it is exercised by a player having more than one nationality and opting for a basketball nationality other than the nationality of the country in which he was born.

20. In the present case, W. cannot be considered as having exercised an option in favour of American basketball nationality, because he was born in the USA and therefore was deemed to already have this basketball nationality, according to article 4.3 (a). It was neither necessary

nor useful for W. to exercise such an option to be considered as having American basketball nationality.

21. Based on this interpretation of the regulation, the CAS considers that, by playing basketball after his nineteenth birthday in the country of his second nationality, i.e. Germany, W. was "*deemed to have opted for the basketball nationality of this country*" (article 4.3 iii. in fine).
22. The CAS concludes that W. has to be considered as a German player by FIBA, on the grounds that he has exercised his option in favour of the German nationality after his nineteenth birthday.

The Court of Arbitration for Sport:

1. Dismisses the plaintiff from his suit.
2. (...)
3. (...)
4. (...)