



Arbitration CAS 2000/A/305, Canadian Paralympic Committee (CPC) / International Paralympic Committee (IPC), award of 24 October 2000

Panel: Mr. Robert Ellicott (Australia), President; Mr. Malcolm Holmes (Australia); Mr. Alan Sullivan (Australia)

Paralympic Games

Athletics

Collision between runners during the race

CAS jurisdiction

Pursuant to the IPC Rules, the starter is the sole judge of whether a race shall be stopped where there has been a collision within 200 metres of the start. This means that in the present case, he had, in relation to the collision which occurred 198 metres from the start line, the sole right to determine whether or not the race should continue.

This application was brought urgently before this Panel in the CAS Appeals Arbitration Division. It relates to the running of the 800 (T54) metres race which took place on Sunday 22 October last. The Application is dated 23 October 2000 and it has been brought by the athlete who won the race, Chantal Petitclerc, the Canadian Paralympic Committee and the Athletics Canada. Among the relevant facts there was a collision between three participants which occurred 198 metres from the start line whilst other participants including Chantal Petitclerc had passed beyond 200 metres from the start. Following the race a protest was lodged because of the collision. It was dealt with by the referee within a short time who upheld it and decided that the race should be re-held. There was then an appeal by the athlete, Ms Petitclerc, to the Jury of Appeal pursuant to the IAAF Rules which, as amended by the IPC Athletics Section Rules, governed the race. The Jury dismissed the appeal. The result of that appeal and the referee's decision was that it is now proposed pursuant to the referee's direction that the race be re-run on Thursday 26 October at 20:52. It is against the Jury of Appeal's decision upholding the referee and the referee's decision itself that this appeal has been lodged.

The International Paralympic Committee (IPC) is a respondent to this appeal. The IPC has submitted a statement in writing in which it indicated that it had strong objection to this Court's jurisdiction on the particular issue in this matter. As it turned out, the Counsel for the Applicant indicated that he did not disagree with the statement insofar as it suggested that we, in the exercise of our jurisdiction, should not go into what are called the "Rules of the Game", thereby undertaking what would be regarded as an investigation into technical discretionary considerations. The Applicant's main point was directed to the question whether or not the starter had the sole power to decide whether a race should be re-run where there had been a collision and whilst the race was within 200 metres of the start.

LAW

1. We have considered the question of jurisdiction. In our opinion based on our own view of the matter and consistent with the decision of the Court of Arbitration for Sport, ad hoc Division at the Atlanta Olympic Games, 1996, in the matter of *M. v. AIBA* (see *Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, p. 413) and the decision of the CAS ad hoc Division at the Sydney Olympic Games 2000, in the arbitration CAS OG 00/012 *Neykova v. FISA and IOC*, we are satisfied that we do have jurisdiction and that we can properly consider this matter without proceeding to consider matters of technical.

We therefore propose to consider the merits of the application. These basically involve a consideration of the Rules of the IAAF which are applicable as amended by the IPC Athletics Section Rules (IPC Rules). The preamble to the IPC Rules provide that the IPC Rules must be read in conjunction with the IAAF Rules which for relevant purposes are contained in the Handbook of the IAAF of 2000-2001. The notes to the Preamble provide that where a Rule is mentioned which is different from the IAAF Rule, the amended Rule is the one to be followed. Where a Rule is stated which does not exist in the IAAF Handbook it must be added to those Rules.

2. The Applicant has drawn our attention first to rule 128 which provides in part in paragraph 1 that:

“The starter shall have entire control of the competitors on their marks and shall be the sole judge of any fact connected with the start of the race.”

That rule then goes on to deal with matters such as where the starter shall position himself, the number of recallers that shall assist the starter, where each recaller shall be placed, etc. It states in paragraph 5, that the warning and disqualification referred to in rule 162.7-8 may be applied only by the starter. There are other paragraphs of rule 128 such as by paragraphs 6 and 7 which also refer to rule 162. Our reason for referring to that is that rule 162 which has the heading “The Start”, has been added to it in the IPC Rules an additional paragraph which applies to Classes T32-34 and T51-54. Relevantly for present purposes, the Class is T54 which applies where athletes in wheelchairs have full control over their trunk but no control over the lower limbs.

Paragraph 12 to rule 162 as added states:

“The starter has the power to stop the race within the first 200 metres in races of 800 metres or longer if a collision takes place. The race is then restarted.”

Another relevant rule is rule 163, paragraph 2 which in part states:

“Any competing runner or walker who jostles or obstructs another competitor so as to impede his progress shall be liable to disqualification from that event. The referee shall have the authority to order the race to be re-held excluding any disqualified competitor or, ...”

Rule 163 paragraph 2 has been added to by the IPC Rules as follows:

“An athlete coming from behind in an attempt to overtake carries the responsibility of ensuring full clearance of the chair being overtaken before cutting across. The athlete being overtaken has the responsibility not to obstruct or impede the incoming athlete once the front wheels of the athlete are in sight.”

Relevantly, what is important in this additional rule is the statement: *“the athlete being overtaken has the responsibility not to obstruct or impede the incoming athlete once the front wheel(s) of the athlete are in sight”*.

3. An initial matter for consideration is what is meant by the words *“the race”* in the expression *“the race within the first 200 metres* in paragraph 12 of rule 162. As already indicated that paragraph states the starter has the power to stop the race within the first 200 metres in races of 800 metres or longer if a collision takes place. It is our opinion that a race is within the first 200 metres if some athletes are within 200 metres of the start even though some of the athletes are beyond the 200 metres. The race is made up of all the athletes and the race is still within 200 metres of the start if some of the athletes are so situated.
4. We are also of the opinion that when paragraph 12 states *“if a collision takes place”* there is to be read in after the words *“takes place”* the words *“within the first 200 metres”*. We read the Rule as only applying where the collision takes place within those 200 metres. In this case the facts as agreed are that the collision did take place within 200 metres and therefore rule 162 paragraph 12 gave the starter, in this case, the power to stop the race within the first 200 metres because of that collision. He did not do so and the race continued on.
5. We are satisfied that by reason of the combined operation of Rule 128(1) (which we have already quoted but repeat in its essential part *“the starter shall be the sole judge of any fact connected with the start of the race”*) and rule 162 paragraph 12 the starter is the sole judge of whether a race shall be stopped where there has been a collision within 200 metres of the start. This means that in this case, he had, in relation to the collision which occurred, the sole right to determine whether or not the race should continue. He decided not to stop it and restart it. The result is that due to the collision he had, in our view, the sole right to decide whether the race should be stopped or continue.
6. In this case there was, on the facts before us, a collision and, as we have stated, as a result, the starter had the sole discretion. He is in effect, the sole arbiter under the rules as to whether a race shall continue in such circumstances.
7. It appears, on the facts before us, that the referee decided that the race should be re-held because there was a collision. In our opinion the referee had no power to do so.
8. We would point out however, that under rule 163 where there has been a jostling or obstruction by one athlete of another (which, when translated into the IPC Rules, seems to mean where an athlete being overtaken obstructs or impedes the incoming athlete once the front wheels of the athlete are in sight) the impeding or obstructing athlete shall be liable to

disqualification from that event. In those circumstances rule 163 paragraph 2 gives the referee the authority to order the race to be re-held excluding any disqualified competitor. The last paragraph of that Rule states:

“Regardless of whether there has been a disqualification, the referee, in exceptional circumstances, shall also have the authority to order the race to be re-held if it considers it just and reasonable to do so.”

9. In the decision by the referee, which is in an official communication, and is annexed to the Application filed on behalf of the Applicants, it is stated that the referee determined that the collision was caused by a named athlete. That athlete herself did have an appeal and her appeal is also dealt with in the papers that are before us but it is important to distinguish between the two appeals. The fact appears to be that the referee called a no race and ordered that it be re-held because there had been a collision which he said was caused by that athlete.
10. Nothing before us shows either by way of admission or in the documentation which was issued by the referee, that he formed any view that there had been an obstruction or jostling which would fit within rule 163 paragraph 2 (as added to by the IPC Rules), namely that the athlete in question had “obstructed or impeded” an incoming athlete once her front wheels were in sight. If there had been such a finding of fact by the referee then it would be our view that the referee would have had the power to order the race to be re-held. However, there being no such finding and because the referee acted on the basis of there being a collision in our opinion, he had no power to exercise any of the power which was given to him under rule 163. It means that the exercise of his discretion miscarried in the circumstances.
11. We should add that simply to say that the collision was “caused by an athlete” does not mean that an athlete has “jostled or obstructed” another athlete so as to impede that other athlete’s progress. That fact being absent as a finding from the referee’s decision we are not prepared to regard the statement in the referee’s official communication as indicating a sufficient factual basis for the proper exercise of his discretion.

The award of this Panel is that the appeal be upheld which means that the decisions of the Referee and Jury of Appeal are set aside and that as a consequence no valid direction has been made within the Rules that the 800 metre T54 race be re-run on Thursday 26 October at 20.52, or at all.

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by the Canadian Paralympic Committee is upheld.
2. The decisions of the Referee and Jury of Appeal are set aside and, as a consequence, no valid direction has been made within the Rules that the 800 metres T54 race be re-run on Thursday 26 October at 20.52, or at all.