



Arbitration CAS 2001/A/328 F. / International Sports Organization for the Disabled (ISOD), International Paralympic Committee (IPC), Disabled Sports USA (DS/USA), order of 3 August 2001

Doping (nandrolone)

Stay of the execution of a sanction

In view of the statement of appeal filed by F. on 14 May 2001, against the decision pronounced by Disabled Sports USA on 24 April 2001;

In view of the application for provisional measures dated 17 July 2001;

In view of the answer to this application for provisional measures filed by the IPC on 25 July 2001;

In view of art. R37, R48 and R52 of the Code of Sports-related Arbitration;

In view of the urgency of the case;

LAW

The Court of Arbitration for Sport, ruling in camera, hereby considers

Whereas F., the Appellant, an athlete affiliated to Disabled Sports USA (DS/USA), underwent a doping control on the occasion of the 11th Paralympic Summer Games in Sydney;

Whereas the Appellant provided two urine samples on 21 October 2000 ("A" sample) and on 25 October 2000 ("B" sample);

Whereas the doping control performed by the Australian Drug Testing Laboratory (ADTL) revealed a prohibited trace amount of nandrolone metabolites.

Whereas the report of the testing laboratory concerning this doping control does not mention the exact concentration of nandrolone metabolites found in Appellant's urine.

Whereas on 29 October 2000, the International Paralympic Committee (IPC), upon the recommendation of the IPC medical Commission decided to suspend the Appellant from all competitions for 4 years, including the 12th Paralympic Summer Games in 2004;

Whereas on 14 March 2001, the International Sports Federation for the Disabled (ISOD), asked all the IPC members to suspend the Appellant from all competitions for 4 years, including the 12th Paralympic Summer Games in 2004;

Whereas on 24 April 2001, DS/USA, notified to the Appellant that his participation in all the events sanctioned by DS/USA, ISOD and International Amateur Athletic Federation (IAAF) is restricted for a four-year period;

Whereas the Appellant requests the CAS to stay the four years suspension in order to compete in the International Champions Track and Field Championship to be held on 7th–12th August 2001 in California;

Whereas the Appellant considers that denial of the opportunity to participate in the International Challenge Track and Field Championship would cause irreparable harm to him;

Whereas the Appellant puts forward that the International Challenge Track and Field Championship is the sole event held this year in the Western Hemisphere for disabled athletes at which there will be a drug testing and at which disabled athletes will have the opportunity to establish world records; moreover, this event has a financial interest for him;

Whereas the Chief operating officer of IPC noted, in his written reply to the Appellant's request dated 25 July 2001, that the Appellant has signed the Sydney 2000 Paralympic Summer Games Eligibility Form and that the IPC informed the Appellant's National Paralympic Committee (NPC) of the penalty imposed; the NPC was responsible of the notification of the penalty and the period for subsequent appeals;

Whereas, in addition, the Chief operating officer of IPC noted that the IPC Medical Code (chapter XI, art. 4) states that: "*The inclusion of a prohibited substance or method within the IPC Medical and Anti-Doping Code is not subject to recourse*";

Whereas, pursuant Art. R37 of the Code of Sports-related Arbitration, it is for the Panel, once constituted, to rule on a request for interim measures;

Whereas, as a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the appellant outweigh those of the opposite party;

Whereas accurate documentation of the laboratory testing is necessary in order to confirm the chain of custody, to know the exact concentration of nandrolone metabolites (in particular to check whether the concentration of nandrolone metabolites is above or below the threshold of 2 ng/ml) and, for the Appellant, to prepare an adequate defence;

Whereas in the instant case a hearing of the Appeal cannot take place prior to the 10 August 2001 because the IPC's offices will be closed and the IPC representatives will not be able to respond and/or participate until that date;

Whereas if the Appellant's request for provisional relief is denied, he will be ineligible to compete in the International Challenge Track and Field Championship even if he is successful in his appeal of the decision of DS/USA;

Whereas the interests of the Respondents in maintaining the suspension would appear to be minimally affected by the granting of limited interim relief.

The Court of Arbitration for Sport, ruling in camera:

1. Grants the request for a stay of the suspension of F. until the final award.
2. States that the present order is pronounced without costs.