



Arbitration CAS 2001/A/354 Irish Hockey Association (IHA)/Lithuanian Hockey Federation (LHF) and International Hockey Federation (FIH) and Arbitration CAS 2001/A/355 Lithuanian Hockey Federation (LHF)/International Hockey Federation (FIH), award of 15 April 2002

Panel: Mr. Martin Schimke (Germany), President; the Hon. Michael Beloff Q.C. (England); Mr. Denis Oswald (Switzerland)

Hockey

Violation of a strict game rule by an umpire

Jurisdiction of internal appeals bodies

1. In previous CAS decisions, it has been established that CAS does not review "field of play" decisions made on the playing field by judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game. An exception is nevertheless possible if such rules have been applied in bad faith. However, according to the CAS jurisprudence, it has been also clearly established that when a referee or umpire does not enjoy free discretion in his control of the game: he or she must comply with a game rule. A deviation by a referee or umpire from a mandatory game rule undermines the utility of the rule and, moreover, may affect the outcome of the game or the tournament.
2. Even holding that the FIH Disciplinary Commission had legitimate jurisdiction over this matter it should *prima facie* have respected the finality of the Tournament Director's decision in accordance, not only with the letter – and spirit of the Tournament Regulations – but also with CAS's consistent jurisprudence to the effect that the "authority of such officials in charge of the game should not be undermined".

From 17th to 30th September 2001 a qualification tournament for the 10th Women's World Cup 2002, took place in Amiens, France.

Classification match No. 46, Lithuania vs. Ireland was drawn 2-2 at full time.

The score remained unchanged after the extra time was played.

Pursuant to Article 10.3 of the Tournament Regulations for two pool competition (hereinafter the Tournament Regulations), a penalty stroke competition ensued. In accordance with Article 11.2 the umpires tossed a coin and the Irish team started the first series.

At the end of the first series of five penalty strokes for each team, the score was still equal and the two sides were tied at four each.

The umpire directed Ireland to continue to take the first penalty stroke of the second series of penalty strokes, a “sudden death” series, that ceases when one team has scored or been awarded one more goal than the opposing team after an equal number of strokes (no minimum) has been taken by each (Article 11.3 of the Tournament Regulations).

Lithuania won the sudden death series.

After Lithuania was declared as the winner of the match, in accordance with Article 17, IHA lodged a protest against an alleged breach of Tournament Regulations in respect of the umpire’s direction.

The Tournament Director upheld this protest. She decided that there had been a breach of Article 11.4. of the tournament regulations and ruled that the second series of penalty strokes should be repeated, initially in the same evening, subsequently (due to the lateness of the hour and the adverse weather conditions) the following morning at 10 am.

Lithuania did not appear to replay the penalty stroke competition at the officially appointed time and was thereafter deemed to have withdrawn from the tournament. The Tournament Director awarded the fixture to Ireland.

Subsequently Ireland participated in the tournament, beat Scotland and finished the tournament in 5th place while India had a walkover for 7th place.

Following the conclusion of the Tournament LHF sent three letters to FIH (dated 5th, 9th and 10th October 2001) protesting the decision of the Tournament Director and requesting a hearing before the Disciplinary Commission of FIH.

In its protest LHF sought the following orders:

- a) *“to annul the decision of the Tournament Director passed on 29th September 2001 during 10th World Cup Qualifier Tournament;*
- b) *to confirm that the Lithuanian hockey team won the match against Ireland on 29th September 2001 during the 10th World Cup Qualifier Tournament with the result 6:5;*
- c) *to recognize the right of the Lithuanian hockey team to compete for the 5-6 places in the 10th World Cup Qualifier Tournament with the Scottish team;*
- d) *to obligate the officials and bodies of the FIH to organize the match Lithuania vs. Scotland for the 5-6 places in the 10th World Cup Qualifier Tournament before the official World Cup Finals beginning in Perth, Australia.”*

The hearing before the Disciplinary Commission was scheduled for 28th November 2001.

On 29th November 2001 the Disciplinary Commission pronounced its judgement. It held that the protest by Ireland was valid in all necessary respects, finding in particular that the Tournament

Official had breached Tournament Regulation 11.4 in directing that Ireland take the 11th stroke of the penalty stroke competition. In addition, however, it found to be undisputable that the Tournament Director in considering the protest, necessarily had a discretion as to the decision she should make, but that she was influenced by a recommendation from a representative of the FIH that she wrongly felt bound to accept and thus did not exercise independent judgement as she was required to do.

Furthermore, since they decided that there was no causal connection established in the present case between the breach of Article 11.4 of the Tournament Regulations and the outcome of the penalty shoot-out and that the breach did not compel a replay the Disciplinary Commission set the Tournaments Director's decision aside and dismissed the protest lodged by Ireland on 29th of September 2001. Lithuania was thus declared to be the winner of match No. 46.

However, since Lithuania and its officials disregarded the Tournament Directors directives by refusing to take part in the replay of the penalty stroke competition the Disciplinary Commission held that Lithuania should not automatically qualify for the 10th World Cup and should instead join other nations in a further qualifying event.

The Disciplinary Commission ruled:

- (a) *“Although Lithuania are the winners of the penalty stroke competition their behaviour has been such that they ought not automatically qualify for the 10th World Cup. They should join other nations in a further qualification event.*
- (b) *Scotland's position of qualification should be recorded as 5th.*
- (c) *Ireland should attend the further qualification event as should India and the USA together with Lithuania.*
- (d) *That, provided the hosts of the 1st Women's Champion Challenge scheduled to be played in South Africa between 9th and 17th February 2002 are agreeable, that event be enlarged to eight nations to enable the attendance of Lithuania and Ireland. The 2 of these 4 teams with the highest position at the conclusion of the tournament are deemed to have qualified for the 10th World Cup. In the event that either Lithuania or Ireland win the Champions Challenge neither qualify for the Champions Trophy. In that event the team ranked next after the classification matches shall qualify for the Champions Trophy.*
- (e) *FIH should pay the reasonable travel and accommodation costs of Ireland in attending that event and should pay 75% of the reasonable travel and accommodation costs of Lithuania.”*

The IHA summarised its Legal Arguments as follows:

- 1) *“The decision of the Tournament Director is final under the Statutes, Bye-Laws, Rules and Regulations of the FIH.*
- 2) *These Statutes, Bye-Laws, Rules and Regulations are binding on the LHF and likewise on the FIH.*
- 3) *The Disciplinary Commission had no jurisdiction in the matter.*
- 4) *The decision of the Disciplinary Commission was made either without evidence and without given the IHA an opportunity to test such evidence as existed.”*

The IHA requested:

- 1) *“An Order setting aside the decision of the FIH Disciplinary Commission.*
- 2) *An Order confirming that the decision of the Tournament Director, made on the 29th September 2001 is valid and in accordance with the Statute, Bye-Laws, Rules and Regulations of the FIH.*
- 3) *An Order confirming that Ireland finished in 5th position in the 10th Women’s World Cup Qualifier played in Amiens, France.*
- 4) *A Declaration that the FIH Disciplinary Commission did not have jurisdiction to entertain the appeal of Lithuania under the Statute and Bye-Laws of the FIH.”*

In its Statement of Appeal the LHF requests partial alteration of the decision of the Disciplinary Commission as follows:

- 1) *“To recognize that the Lithuanian hockey team has the right to compete for the 5-6 places in the 10th World Cup Qualifier Tournament with the Scottish team.*
- 2) *To obligate the officials and bodies of the FIH to organize the match Lithuania vs. Scotland for the 5-6 places in the 10th World Cup Qualifier Tournament before the official World Cup Finals beginning in Perth, Australia.”*

The FIH did not submit a specific motion and an answer to either appeal in accordance with R55.1 and 2 of the CAS Rules respectively. It adopted a neutral posture stating:

“The FIH will accept the decision of the Panel pursuant to both appeals and submits that the Panel declares which team is the winner of match nr. 46.

The FIH is further of the opinion that it might be fair, considering the mistake that was made in Amiens, to give the team, which would be declared by the Panel as the loser of match nr. 46 in Amiens, the opportunity to participate in a play off tournament and qualify for the 2002 World Cup.

The FIH will organize, early spring 2002, a play off competition between Ireland, the USA and India if the Lithuanian team is declared the winner of match nr. 46 and a play off competition between Lithuania, the USA and India if Ireland is declared as the winner of the match.”

Article 11 of the FIH Tournament Regulations provided:

- 11.3.1 *In the event of an equal number of goals having been scored or awarded, a second series of penalty strokes shall be started with the same players, subject to incapacitated defending goalkeepers being replaced, and shall cease after a team shall have scored or been awarded one more goal than the opposing team after an equal number of strokes (no minimum) have been taken by each team. That team shall be the winner of the second series which, if necessary, may exceed of ten penalty strokes, five for each team. The sequence of stroke takers does not need to be the same as in the previous series and the team manager has freedom of choice at the time of each stroke as to which of the nominated players per round.*
- 11.4 *The Team whose player has taken the first penalty stroke of the first series (see regulations 11.1 a) shall not take the first penalty stroke of the second series.*

Article 14 of the FIH Tournament Regulations provided:

- 14.1 *During the pool matches*
- a. *A team refusing to play or complete a match or is to be considered as withdrawing from the tournament.*
 - b. *If a team thus withdraws from the tournament, it will be considered as losing the matches it has played until then as well as all the matches it has still to play by a score of 5-0 and that team shall be ranked last in its pool (and in the tournament). The pool points table shall be corrected accordingly. A team refusing to play or to complete a match shall be considered as withdrawing from the tournament at that stage and losing the match in question. It will not appear in the final ranking of the tournament and will not receive, or will not be allowed to keep any medals and trophies to which it was entitled or which it had already received. The place this team would have occupied in the final ranking of the tournament will remain vacant and will therefore not be attributed to any other team taking part.*

Article 17 of the FIH Tournament Regulations provided:

- 17.1 *If a team manager wishes to lodge a protest at the end of a match or at the end of a penalty stroke competition, then such a protest must be in writing and handed to the Technical Officer on duty within 10 (ten) minutes of the match or of the penalty stroke competition ending declaring the intention to do so when signing the match or penalty stroke competition report by noting the intention immediately under the signature. If the text of the protest is not received in writing prior the expiry of the 10 (ten) minutes, then it will be deemed that no protest had been registered.*
- 17.2 ...
- 17.3 *The tournament Director must make a decision in writing at the latest two hours after the end of the match or of the penalty stroke competition in question.*
- 17.4 *In the case of there being no Appeal Jury, this decision is final.*

Article 17 of the FIH Statutes provided:

- 17.1 *The Disciplinary Commission shall be an independent commission of the federation and shall be vested with the power to investigate and take such action as may be necessary following any reported breach and/or act of misconduct on or off the field of play.*
- ...

Article 20 of the FIH Statutes provided:

- ...
- 20.3 *Any person or body who is or which is subject to a jurisdictional decision of a Jurisdictional Body may appeal to the CAS, to the exclusion of any other jurisdiction, whether ordinary or arbitral, in accordance with the Code of Sports-related Arbitration (appeals arbitration proceedings)*

20.4 *The appeal must be in writing to the CAS within fourteen (14) days of the notification of the decision in question by the FIH to the person concerned or his NA.*

...

On the 29th of November 2001, the FIH Disciplinary Commission took the decision from which the appeal is brought.

On 12th December 2001, the statement of appeal of the IHA against the above mentioned decision was lodged within the time limit prescribed in Article 20.4 of the Statutes (CAS 2001/A/354).

On 13th December, the LHF submitted its statement of appeal (CAS 2001/A/355), within the time limit prescribed in Article 20.4 of the Statutes.

By letter dated 14th January 2002, the Acting Secretary General of CAS informed the parties that the President of the CAS Appeals Arbitration Division had decided in agreement with all parties that both appeals (CAS 2001/A/354 and CAS 2001/A/355) would be conducted jointly.

LAW

1. The Appellants have exhausted the internal legal remedies of the FIH. Therefore the jurisdiction of CAS results from Article R47 of the CAS Code in connection with the FIH Statutes and Bye-Laws (Article 20). Pursuant to Article R57 of the CAS Rules the Panel is not bound by any evidence raised before or assessments taken by a lower instance tribunal.
2. Due to the fact that the Respondent decided to stay neutral in this case Article R55.3 of the CAS Code applies. Therefore the Panel was entitled to hear the case and decide on the basis of the documents filed. In the light of the opposing objectives of both appeals the Panel conducted these proceedings as if the two appellants were the parties in dispute – although technically the subject matter of the appeal was the correctness or otherwise of the decision by the FIH.
3. With respect to the deadline for appeals, Article 20 of the Statutes rather than Article R49 of the CAS Code applied. Both appeals were duly lodged within the time-limit of Article 20.4 of the FIH Statutes.
4. Since the FIH has its legal domicile in Switzerland and the parties did not decide upon another governing law the Panel is to required to decide the appeals according to Article 20.7 in connection with Article 3.1 of the Statutes. Furthermore the provisions of the CAS Appeals Procedure (Article R47 ff of the CAS Code) are to be applied.

5. Accepting the arguments advanced forward by LHF the Panel concluded that, pursuant Article 17.1 of the Statutes, the Disciplinary Commission had full jurisdiction in the dispute. The Disciplinary Commission can be appealed to under Article 17.1 of the Statutes in case of "any reported breach and/or act of misconduct...". In compliance with the unambiguous wording of this provision the jurisdiction of the Disciplinary Commission is not only limited to specific disciplinary disputes, but applies to **all** reported breaches. Identical conclusions can be drawn from the Bye-Law to Article 17. According to its wording, read compatibly with the Statutes, this provision does not regulate jurisdiction, but comprises rules to be followed for the appointment of DC members, the fixing of a deadline, and the burden of proof in specific situations. It follows that the Bye-law to Article 17 should not be deemed to constitute a fetter on the general jurisdiction rule of Article 17.1 itself. Nor can any restrictions to the Disciplinary Commission's jurisdiction be deduced from Articles 19 or 21. Those Articles manifestly deal with matters other than jurisdiction. Therefore, in the case in question the "reported breach" within the meaning of A2 Bye-Law of Article 17 of the Statutes is the protested decision of the Tournament Director.
6. As noted above, IHA alleged a violation of its procedural rights since it was not given the opportunity to cross-examine the Technical Director. However, according to Article R57 of the CAS Code the Panel has full jurisdiction in this dispute and is not bound by decisions taken by any other jurisdictional body. The case will be considered de novo and any such procedural violation (if any) may be cured by the proceedings and new hearing before CAS [See: USA Shooting / UIT, CAS 94/129 para 59].
7. Seizing upon a statement by the Irish team manager who gave evidence before the Panel, that she had not addressed the detailed written protests until about 20 minutes after the end of the penalty stroke competition, Lithuania alleged that the protest was invalid in consequence of a failure to comply with Article 17.1 of the Tournament Regulations. This rule is not entirely easy to construe. The Panel has however to interpret the Rules in question in keeping with the perceived intention of the rule maker, and not in a way that frustrates it [See: F. A. v/ FILA, CAS 2001/A/317 and Digest of CAS Awards, 1986 – 1998, Berne 1998, by M. REEB (hereinafter the Digest): A. C. v/ FINA, CAS 96/149, p. 251, 259, para 22].
8. The Panel is not minded to find that there had been such a departure from the rule meaning that the protest should be treated as not having been made. In reaching this conclusion they are influenced by the following factors:
 - (1) According to the Irish team manager, an oral protest was promptly submitted. There is no contradictory evidence.
 - (2) In the compilation of the Match Report, a note stating "Ireland protests under Rule 11.4" was included under the heading "remarks". This document was signed, amongst others, by the Irish team manager and is evidence of a protest in writing within the 10 minute period.
 - (3) It is clear from the evidence presented from both sides [including, amongst other items, paragraph 3 of the LHF letter to the FIH dated 5th October 2001], that the Irish team was asked to stay on the pitch while the issue of the protest was resolved. This

obviously made it impossible for Ireland to lodge their protest in writing within the required time limit for a protest. The team manager stated in her oral testimony that she made the written protest "as soon as possible".

- (4) The protest was accepted as valid by the Tournament Director; the deposit provided under Article 17.2 of the Tournament Regulation was also accepted by her.
 - (5) Until the hearing before this Panel no one sought to raise this issue. Indeed, the Disciplinary Commission stated that the protest was "duly made" (paragraph 2 of the decision), and that "it was common ground at the hearing, and we so find, that (a) the protest by Ireland was valid in all necessary respects" (paragraph 12 (a) of the decision).
9. In a situation of this kind it is necessary to consider whether the spirit of the rule (in as much as it may differ from the strict letter) has been violated. The Panel has no doubt that the spirit of the rule was complied with and that the Tournament Director was entitled to waive any technical breach (if any). [See the Digest: United States Swimming v/ FINA, CAS OG 96/001, Page 377, 380, para 14-16].
 10. In any case LHF is estopped from taking the point at this late stage of the proceedings in accordance with Article R56 of the CAS Rules. The LHF's objection regarding the delay of the protest is therefore dismissed.
 11. It was also in issue as to whether the Irish captain had made any objection before the start of the second penalty stroke series. It was suggested on behalf of the LHF that Ireland appeared to reserve their right to object until after the outcome of that series was known, in order to seek a win-win situation for their team. The Panel recognised that the various match officials (judges, technical officer, and umpire) either make no reference to any such contemporaneous Irish objection or positively dispute that it was made.
 12. As against this the Panel noted that in the written protest submitted shortly after the conclusion of the match Ireland states, "Before starting the second series she [i.e. the captain] specifically asked the judge whether the sequence of stroke taking by both teams should be reversed". It does not seem to the Panel likely that Ireland should have invented this on the spur of the moment.
 13. The Tournament Regulations, especially Article 11.4 must have been known to the captains of both teams: indeed the LHF claims in their appeal that it was their captain who questioned the umpire's decision. The fact that the Irish captain prudently did not seek to challenge then and there the official's decision in any aggressive way may explain why her question was not construed as an objection.
 14. Both witnesses, Miss McCarthy (the Irish Team Manager) and Miss Kohler (the Irish team captain), testified consistently that such contemporaneous objection was made. The Panel is not disposed to mistrust them in the absence of any contrary evidence, especially since LHF decided not to add any statements from their own manager or captain to the various reports to which the Panel referred.

15. It has at all material times been common ground that, owing to a mistake by the Tournament official, Article 11.4 of the Tournament Regulations was not complied with. Ireland took both the first penalty stroke in the first series and the first penalty stroke in the second series (the latter, but not the former, being sudden death).
16. In previous CAS decisions, it has been established that CAS does not review "field of play" decisions made on the playing field by judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game. An exception is nevertheless possible if such rules have been applied in bad faith (see CAS OG 96/006 M. v/ AIBA, in CAS Digest I, p. 413 ff, CAS OG 00/013, Segura v/ IAAF, in CAS Awards – Sydney 2000, p. 131 ff and CAS OG 02/007 Korean Olympic Committee v/ ISU, award of 23 February 2002).
17. However, according to the CAS jurisprudence, it has been also clearly established that when a referee or umpire does not enjoy free discretion in his control of the game: he or she must comply with a game rule. A deviation by a referee or umpire from a mandatory game rule undermines the utility of the rule and, moreover, may affect the outcome of the game or the tournament (see CAS 93/103 SC Langnau v/ Ligue Suisse de Hockey sur Glace, in CAS Digest I, p. 307 ff).
18. In the present matter, only the decisions rendered by the Tournament Director and the Disciplinary Commission are in issue. The Panel emphasizes that it can review the breach of art. 11.4 of the FIH Tournament Regulations by the umpires and its consequences in the context of these decisions and not otherwise. The Panel is of the opinion that a violation of such a strict game rule means that there has been irregularity in the course of the match, regardless of whether such violation in any way affected its outcome.
19. However, even if, contrary to precedent, it were necessary for the Panel to consider that the irregular application of Article 11.4 of the Tournament Regulations had an adverse effect on Ireland, it would judge the evidence sufficient to support such a conclusion for the following reasons.
20. The Panel is convinced that the rule dealing with such a sensitive matter, as penalty stroke competition must have a purpose; and that any departure from it ought to be attended with some consequences. The Panel received interesting expositions from both the Lithuanian and the Irish parties as to the balance of benefit / burden in having first penalty stroke in both series. As already recited the LHF contended that Ireland had a double bonus; the IHA contended that they had a palpable disadvantage. The Panel appreciated that there are arguments both ways and no empirical evidence to support either. It is sufficient to say that, in general, whether in any particular sporting situation one wishes to take the first or second opportunity to shoot depends on particular circumstances, and especially the temperament and personality of the player who has to bear the consequence of any choice.
21. It was, at least, common ground between the parties that in this match there was a measure of dispute as to who should take the first stroke of the second series, which delayed its inception. The Panel considers this inevitably had a disruptive effect upon both teams, and created a

situation different from that, which would have ensued if Article 11.4 of the Tournament Regulations had been properly applied.

22. Miss Kohler, the Irish captain, who gave oral evidence before the Panel, said that the Lithuanian captain won the toss, and elected to defend the stroke on the first series, with the consequence that Lithuania should have taken the first stroke on the second series.
23. Judge S. Bouthors stated in her match report that Ireland won the toss. The credibility attached to that report was somewhat diminished inasmuch as the author made an error in the end of match full time score, stating that it was 1-1 when it was in fact 2-2. It is not without interest to note that the captain of Lithuania was a goalkeeper, who, it might be thought, would be predisposed, playing a proper captain's role, to choose to defend first. Be that as it may, the LHF chose not to adduce any further evidence even in written form to contradict the Irish case of which they had forewarning in the Irish Appeal Brief dated 21st December 2001, that Lithuania won the toss.
24. Whether or not having the first stroke is advantageous or disadvantageous generally, in the Panels judgment in this situation the fact that Ireland had to take the first stroke of the second penalty series would have been disadvantageous to them, because of their consciousness of the breach of the rule. Miss Kohler claims exactly that, stating that the impact of the official decision was adverse to Ireland. She was distracted from concentrating on the game itself by the argument about the proper application of Article 11.4 of the Tournament Regulations. The lapse of time engendered by such argument further disturbed her concentration. Moreover, being aware that the Lithuanian captain had already expressed a preference to defend, she was aware that Lithuania would regard the error as a benefit rather than a reverse.
25. There is no provision under Article 11.4 of the Tournament Regulations for the consequences of its breach. The Panel infer that this is designed to allow the Tournament Director a measure of discretion [It is, however, clear that it was intended to be obeyed - and the Panel find that responsibility for its proper application lay with the Tournament officials.]
26. The presumption is surely that the Tournament Director should react in some way to cure the mischief. In this event, ordering the retaking of the second series was the minimum that she could properly direct, unless she chose to do nothing at all.
27. The Panel would have regarded doing nothing as an aberrant decision on her part unless it were clear beyond reasonable doubt that the irregularity had no adverse impact.
28. The LHF suggested that the Tournament Director ought not to have consulted with the FIH representative because the obligation to consult was not triggered. Article 22 of the Tournament Regulations obliges the Tournament Director to consult the FIH representatives in an unforeseen event. As mentioned above, Article 11.4 of the Tournament Regulations provides no consequences for its breach. Therefore the Panel, based on the facts presented, identifies the breach as an unforeseen event within the meaning of Article 22.

29. Furthermore the Regulation does not imply that the Tournament Director can only consult in a case of unforeseen events. On the contrary, the Panel interprets the Regulation to provide that the Tournament Director enjoys a right or power to consult in other circumstances as well. It would, indeed, be common sense for the Tournament Director to take advice in the fraught situation which occurred on the afternoon in question.
30. What, of course, the Tournament Director could not do was to abdicate the decision - which it was hers alone to make - to a third party. The foundation of the LHF's argumentation that this is precisely what she did (a conclusion endorsed by the FIH Disciplinary Commission) is located in the Match Report of the Tournament Director, which says:
- "I tried to find a solution to avoid playing the penalty competition and I discussed the problem with Tony who insisted I cannot reject the protest and will have to restart the match when the mistake had been made. With his recommendation with which I felt very uncomfortable I regretfully decided to replay the sudden death with a PS competition."*
31. There are several points that could be made about this not altogether clearly drafted document:
- (1) The report suggests that the decision was in fact that of the Tournament Director. ("*...I...decided...*")
 - (2) The FIH representative is described as having made a "*recommendation*".
 - (3) That the Tournament Director made her own decision is corroborated by her contemporary note "*I have decided (sic) that the protest has been properly declared etc.*"
32. The fact that the FIH representative may have insisted that the protest could not be rejected and that the match should be restarted does not mean the Tournament Director felt obliged to follow that recommendation. Furthermore, the fact that she felt "very uncomfortable" with it may well be explained by the natural reluctance of someone to snatch the fruits of victory from a young and celebrating team in circumstances where the fault was none of theirs but that of the Tournament officials.
33. In addition it was the LHF case that the Tournament Director was present at the Disciplinary Commission's hearing. Hence it would have been possible for her to be called on the Lithuanian team's behalf to prove that she had abdicated her discretion, but she was not. In the Panel's opinion that presumption of regularity is not displaced and an inference of inappropriate influence by the FIH representative is inappropriate.
34. Furthermore LHF did not offer any evidence to substantiate its allegation that the FIH representative had been the recipient of bribes. This unwarranted allegation is dismissed.
35. Lithuania did not appear for the replay of the second series on the morning on 30th September 2001. *Prima facie* this amounted to misconduct. The LHF stated that they had not been informed of the adjourned date, time and place of the play-off. This would have been a breach of Article 17.3 of the Tournament Regulations which requires a "decision in writing 2

hours after the end of the match or the penalty stroke competition at latest...". This submission however, is inconsistent with other material before the Panel.

36. The evidence showed that Lithuania and its management were not prepared at any stage to entertain the prospect of a play-off [see the Tournament officials e-mail of 29th October 2001:
"When I informed the Lithuanian management that the rule had been broken by myself and a protest had been lodged and as soon as they understand what was going on they were adamant that they were not going to be involved in any replay under any circumstances."
37. This appears to be corroborated rather than the reverse by the Lithuanian letter of protest 5th October 2001 addressed to the FIH:
"After a half an hour, when girls finished showering we collected them in the pitch and explained, that Irish team gave a protest about penalty scoring order. Players reaction was the same – Lithuanian team is not guilty about that, this is TO and umpires problem, and this fact could not affect the result of a match. The very competition in a pitch was clean and played in a Fair Play spirit."

Moreover, as appears from paragraph 10 of the same document, Lithuania's president was invited "after dark" to attend a meeting in which the replay decision was announced:

"After dark I was invited to attend the meeting together with Technical Director, the Irish team manager and R. David Balbirnie. Technical Director announced the decision that Lithuanian team would have to replay the penalties",

see also the report of Technical Director:

"I met with two managers.... I gave them the written decision..."

It could scarcely have been thought by that time that the replay could be on the same day.

38. The LHF offered no explanation why Lithuania did not make any enquiry as to the proposed time of the replay, even were the Panel to accept that they did not receive the unambiguous notification dated 29th September 2001 on its face directed at all team managers or technical officials or people involved that
"the second series the penalty stroke competition re Lithuania and Ireland will be played tomorrow morning at 10 o'clock in Amiens".
39. There is no serious doubt that Lithuania acted throughout as if they were the persons who were to be playing Scotland, i.e. as winners of this match with Ireland, and behaved throughout as if the Tournament director's decision had no validity. This was risky behaviour in as much as Article 14.1a of the Tournament Regulations entitled "Failure to play" provides:
During the pool matches (a) a team refusing to play or complete a match or is to be considered as withdrawing from the Tournament.
40. The LHF did not expressly deny that their team decided to disobey the Technical Directors decision. The Panel can neither ignore nor excuse their behaviour: Lithuania could have

appeared for the replay of the penalties with their protest being lodged simultaneously: the possibility of appearing with their protest against the result being reserved, while not provided for in the Tournament Regulations, is conventional in the sports world. The LHF should certainly have selected this option which protected all their rights when the above mentioned Article 14.1a of the Tournament Regulations was well-known to them, a fact expressly confirmed by the LHF's representative attending the hearing, in respond to the question being posed by the Panel.

41. In compliance with Article 17.1 of the Statutes the Disciplinary Commission considered itself to have the power to investigate and take necessary action not only (in the context of an appeal) by confirming or overruling the Technical Director's decision, but also by coming to a new independent determination freed from any obligation to consider the potentially binding effect of the Technical Director's decision as provided for by Article 17.4 of the Tournament Regulations.
42. Even holding, as the Panel has, that the Disciplinary Commission had legitimate jurisdiction over this matter it should *prima facie* have respected the finality of the Tournament Director's decision in accordance, not only with the letter - and spirit - of the Tournament Regulations, but also with CAS's consistent jurisprudence to the effect that the "authority of such officials in charge of the game should not be undermined" [See the Digest: M. v/ AIBA CAS OG 96/006, p. 413, 415, para 13].
43. Therefore the decision of the Disciplinary Commission is set aside and the decision of the Tournament Director is restored. The Tournament Director was correct to order the replay. Lithuania's refusal to replay necessarily led to their withdrawal from the Tournament. Ireland therefore properly played Scotland. In consequence of this win, they are ranked fifth. Ireland's appeal succeeds and Lithuania's appeal necessarily fails.

The Court of Arbitration for Sport rules:

1. The appeal filed by the Irish Hockey Association is hereby upheld so that:
 - The decision of the FIH Disciplinary Commission is set aside,
 - The decisions rendered by the Technical Director on the 29th and 30th September are restored.
2. The appeal filed by the Lithuanian Hockey Federation is hereby dismissed.

3. In consequence:
 - Lithuania are deemed to have withdrawn from the 10th Women's World Cup Qualifier tournament,
 - The result of the Ireland-Scotland match played on 30th September 2001 stands,
 - Ireland are held to have finished in 5th place in the tournament.
4. (...)