



**Arbitration CAS 2004/A/727 Vanderlei De Lima & Brazilian Olympic Committee (BOC) v. International Association of Athletics Federations (IAAF), award of 8 September 2005**

Panel: Mr Kaj Hobér (Sweden), President; Mr Jean-Pierre Morand (Switzerland); Mr Richard McLaren (Canada)

*Athletics*

*Marathon race of the Athens 2004 Olympic Games*

*Rule of the game*

*Scope of review of the CAS*

*Evidence of arbitrariness or bad faith*

- 1. When there is a relevant procedure in place to resolve field of competition decisions, the CAS accepts the decision reached as final except where it can be demonstrated that there has been arbitrariness or bad faith in arriving at this decision. This position is consistent with traditional doctrine and judicial practice which have always stated that rules of the game, in the strict sense of the term, should not be subject to the control of judges.**
- 2. Before a CAS Panel will review a field of play decision, there must be evidence of bad faith or arbitrariness. In other words the Appellant must demonstrate evidence of preference for, or prejudice against, a particular team or individual.**
- 3. To award a gold medal without changing the results of the race is beyond the scope of review of the CAS. Had the appealed decision been taken arbitrarily or in bad faith, the remedy would not have been a change of the announced results, let alone awarding a supplementary gold medal without changing the results of the race. The only available remedy would have been to invalidate the race and order it be rerun.**

Mr. Vanderlei Cordeiro de Lima (the “Appellant”) is a Brazilian athlete who runs the marathon and who took part in the marathon race organized during the Athens Olympic Games in 2004. On 29 August 2004, while the Appellant was leading the marathon race, by approximately 30 seconds, at precisely 36.5 kilometres into the race a man emerged from the spectators and pushed the Appellant from the middle of the road to the side of the course into a group of spectators. It took the intervention of spectators and security guards to free the Appellant from the intruder.

Approximately seven minutes after the attack the Italian racer Stefano Baldini overtook the Appellant. Later Mebrahtom Keflezighi of the USA also overtook the Appellant. The final result of the race saw Stefano Baldini complete his race in 2hrs 10min 55 seconds to take the gold medal, with Mebrahtom Keflezighi finishing second for the silver medal at 2hrs 11 min 29 seconds. The Appellant crossed the finish line third at 2hrs 12min 11 seconds. He was awarded the bronze medal.

As he entered the Panathinaiko Stadium, the spectators gave the Appellant a resounding ovation. He was met with another roar of approval as he was awarded his bronze medal later that evening. The Appellant was also awarded the honorary medal from the International Olympic Committee, the Pierre de Coubertin medal, for exceptional sportsmanship.

At 8:30 p.m. on the evening after the race, an appeal form was filed on behalf of the Appellant together with a handwritten document to the Competition Director stating the following: *“During the marathon race our athlete Vanderlei Cordeiro de Lima number 1234, at that time leader of the race was grab (sic) and trown (sic) down for one person for 15 to 20 seconds and he lost his position in favour of the Italian athlete, because of that fact. We ask the gold medal to be award (sic) to our athlete”*.

At 9:15 p.m., the Jury of appeal issued the following statement: *“Following an appeal lodged by the Brazilian team for obstruction in the Men’s Marathon the Jury reviewed the video of the race. They would like to express their sympathy towards the athlete and regret the unfortunate incident. This shall not happen in the future and the security should be reinforced for road events. The IAAF is asking the Greek authority to identify the responsible person and take the appropriate sanctions. The final result cannot be changed”*.

On 13 September 2004, the President of the Brazilian Olympic Committee (BOC) and the President of the Brazilian Athletics Federation addressed a letter to the President of the International Association of Athletics Federations (IAAF), Mr. Lamine Diack, pleading to re-establish the Olympic spirit by granting the gold medal to the Appellant. Apparently this letter has remained unanswered.

On 28 September 2004, the Appellant filed a statement of appeal in which he requested that the CAS grant him a gold medal without prejudice to the other athletes who were awarded medals after the race.

Based on partial times published on the IAAF/Athens and Athens 2004 official websites, the Appellant was running at the maximum speed of a little less than 3 minutes and 2 seconds per kilometre between kilometres 30 and 40, where the incident occurred. The gold medallist, Stefano Baldini was running at 3 minutes per kilometre. The difference between the two runners was 28 seconds at the 35<sup>th</sup> kilometre. The Appellant argued that Stefano Baldini was reducing his time difference by 2 seconds per kilometre. Hence according to the Appellant: *“These partial times for this segment of 10km were 30min14sec for Vanderlei Cordeiro de Lima and 29min59sec for Stefano Baldini, gold medal winner. Confirming the calculation above, the TV shows that the difference between Vanderlei Cordeiro de Lima and the “chase pack” was that of 25 seconds, that is, on the location of the accident, km 36,5, Stefano Baldini reduced from 3 seconds to 1,5km. Envisioning that Vanderlei Cordeiro de Lima had not been attacked, Stefano Baldini would be discounting up to the end of the race, considering also the remaining 6km until the end, 12 seconds, which makes it obvious that Vanderlei Cordeiro would win by 16 seconds”*.

A second analysis of the television segment showed that it took Stefano Baldini 14 minutes and 30 seconds to run the distance between the 35<sup>th</sup> and 40<sup>th</sup> kilometre marks. It took the Appellant, running over the same segment, 15 minutes and 8 seconds, a difference of 29 seconds. Hence, Stefano Baldini was running at a speed of 6 seconds/kilometre faster for each kilometre than the Appellant. The Appellant therefore held that had the attack not occurred, the athletes would have met at the 41<sup>st</sup> kilometre.

In both instances, the Appellant argued that he was subjected to an attack in which he was pushed from the middle of the street, pulled to the sidewalk and thrown to the ground. In addition to the time the attack wasted, he had to recover his racing rhythm and his concentration. He had his energetic system blocked by a sudden discharge of adrenalin. This resulted in 16 seconds of approximate time loss. Based on this analysis, the Appellant argued that at the 41<sup>st</sup> kilometre he would have been 16 seconds ahead of Stefano Baldini, at 1195 meters from the finish line. Had there been no attack, Stefano Baldini would have had to run 13 seconds per kilometre faster, thus at a higher speed than that at which he was actually running.

The Appellant held that there was an additional psychological impact: At the moment of the accident, the Appellant was out of sight of the racers following him. Due to the attack, Stefano Baldini realized that the Appellant was much closer than he could have imagined. This enhanced his motivation and stimulated his determination, and helped him overtake the Appellant.

The Appellant also argued that the organization of the race was flawed due to a violation of security regulations. The Appellant took the view that articles 127.2, 144 c and 240.7a of the competition rules of the IAAF were violated. According to article 127.2, *“The Umpire shall be placed by the Referee in such a position that he may observe the competition closely and, in the case of failure or violation of the Rules (other than Rule 230.1) by an athlete or other person, make an immediate written report of the incident to the Referee”*. Article 240.7 stipulates that: *“Organizing committees of Road races shall ensure the safety of athletes and officials”*. Finally, article 144.c expressly prohibits *“pacing in races by persons not participating in the race, by athletes or walkers lapped or about to be lapped or by any kind of technical device”*.

The Respondent argued that the CAS panel had no basis for granting the order requested by the Appellant based on the relevant and applicable rules and upon the decision of the IAAF Jury of Appeal which must be regarded as final. Article 57.5, of the then applicable IOC Charter, provides that each International Federation is responsible for the technical rules of its competitions including the appointment of Juries of Appeals. In the event of disputes on the field of competition, a specific dispute resolution procedure is established within the rules of IAAF which are applicable in the events organized during the Olympic Games. This procedure culminates in the decision of the Jury of Appeal which is considered final. IAAF Rule 60.1 states: *“Unless otherwise stated in a specific Rule or Regulation (for example, in relation to disputes arising on the field of competition), all disputes arising under these Rules shall be resolved in accordance with the provisions set out below”*.

Hence, the Respondent argued that where disputes on the field of competition are concerned, a specific dispute resolution procedure is established within the IAAF Rules, which culminates in the decision of the Jury of Appeal. This decision is final. The IAAF Rules explicitly recognises this

procedure. Specifically Rule 60.1 states that all disputes other than those that are subject to specific procedures in the Rules, such as those arising on the field of competition, are submitted to arbitration before CAS. Regarding this matter, the Respondent held that the Appellant's case is one that has arisen in the field of competition and therefore cannot be decided by the CAS.

Relying on CAS decisions, concerning field of competition disputes, the Respondent argued that the CAS has jurisdiction in relation to such disputes only in circumstances where it can be demonstrated that the relevant decision was made in bad faith. In this matter, the Respondent took the view that the Appellant was unable to provide evidence that the decision rendered by the Jury of Appeal was made in bad faith.

The Respondent also argued that the Appellant was unable to demonstrate with any degree of certainty that the outcome of the race was affected in the way he claimed, simply due to the nature of sports and the uncertainty of the outcome of any competition. It is not possible to state with any degree of certainty, and with no more than mere speculation, that the Appellant would have won the race had his progress not been impeded.

## LAW

### Jurisdiction and Admissibility

1. The Appeal concerns events which took place on the final day of the XXVIII Olympiad in Athens. The CAS has jurisdiction to decide the present dispute between the Athlete and the IAAF. The jurisdiction of the CAS *in casu* is based on Rule 74 of the Olympic Charter (2003 edition) which provides that "*Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-related Arbitration*". As the appeal was filed after the end of the Olympic Games and the dissolution of the CAS ad hoc Division, these proceedings are governed by Art. R47 *et seq.* of the Code of Sports-related Arbitration (the Code) and not by the Arbitration Rules for the Olympic Games.
2. Rule 74 of the Olympic Charter does not provide for any time limit with respect to the filing of appeals before the CAS. Therefore, Article R49 of the Code is applicable. It provides for a time limit of 21 days from receipt of the decision appealed against. The decision challenged by the Appellants is the one issued by the IAAF Jury of Appeal on 29 August 2004. The present appeal was filed with the CAS on 28 September 2004. It appears therefore that the appeal was not filed on time. The IAAF has, however, agreed to the jurisdiction of the CAS. The Panel therefore finds that it can entertain this appeal and render an arbitral award.
3. Regarding the question of the standing of the appealing parties, it is clear that the Appellant, who is requesting a gold medal, has standing. Winning an Olympic medal is one of the ultimate goals in an athlete's career which can bring with it many rewards. This gives the

athlete a particular interest in challenging a decision, if a modification of the decision could allow him to obtain a gold medal, or a medal he did not get (see CAS 2002/O/373 of 18 December 2003 published in: REEB M. (ed.), Digest of CAS Awards III, The Hague 2004, p. 17).

4. The standing of the BOC is formally disputed by the Respondent. Since the BOC has not made a specific request with respect to itself, but rather is supporting the Appellant's request for a gold medal, the interest of the BOC overlaps with the interest of Vanderlei de Lima. In accordance with the CAS case law in this area, the appeal of the BOC must therefore formally be dismissed (see CAS 2002/O/373 mentioned above, p. 30).

### Applicable Law

5. According to Article R58 of the Code, the Panel is required to decide the dispute *"according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
6. In accordance with the above-mentioned provision, the applicable rules in this matter are the IAAF Rules.

### Merits

7. IAAF regulations set out the rules applicable for protests and appeals concerning the result or conduct of an event. Pursuant to IAAF Rule 146, protests concerning the result or conduct of an event shall be made within 30 minutes of the official announcement of the result of that event. This appeal is made to the Referee orally by the athlete himself or by someone acting on his behalf. The Referee may decide or refer the matter to the Jury of Appeal. The Jury of Appeal shall make a decision after consulting all relevant persons, including the Referee and Judges. If the Jury of Appeal is in doubt, other available evidence may be considered.
8. In this matter, the Jury of Appeal rejected the Appellant's appeal and did not change the results of the race awarding the gold medal for the Marathon race to Stefano Baldini. In doing so, the Jury relied on the videorecording of the race, as well as the finishing times of the athletes concerned.
9. The first issue to be addressed in this case is the scope of review entrusted to the CAS in matters of this nature. Generally, the CAS has jurisdiction to try and review field of competition decisions. Where there is a relevant procedure in place to resolve such issues, however, the CAS accepts the decision reached as final except where it can be demonstrated that there has been arbitrariness or bad faith in arriving at this decision (CAS OG 96/006, in REEB M. (ed.), Digest of CAS Awards I, p. 409; CAS OG 00/013, in REEB M. (ed.), Digest of

CAS Awards II, p. 680; CAS OG 02/007, in REEB M. (ed.), Digest of CAS Awards III, p. 611; CAS OG 04/007). This position is consistent with traditional doctrine and judicial practice which have always stated that rules of the game, in the strict sense of the term, should not be subject to the control of judges, based on the idea that *“the game must not be constantly interrupted by appeals to the judge”* (Swiss Federal Tribunal, ATF 118 II 12/19). In some legal systems, particularly in the United States and France, the rules of the game are not shielded from the control of judges, but their power of review is limited to that which is arbitrary or illegal (CAS OG 96/006).

10. Before a CAS Panel will review a field of play decision, there must be evidence of bad faith or arbitrariness. In other words the Appellant must demonstrate evidence of preference for, or prejudice against, a particular team or individual.

In the matter CAS OG 02/007, it was stated: *“The jurisprudence of CAS in regard to the issue raised by the application is clear, although the language used to explain that jurisprudence is not always consistent and can be confusing. Thus, different phrases such as “arbitrary”, “bad faith”, “breach of duty”, “malicious intent”, “committed a wrong” and “other actionable wrongs” are used apparently interchangeably, to express the same test (CAS OG 96/006 and CAS OG 00/013). In the Panel’s view, each of those phrases means more than the decision is wrong or that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each, of those phrases mean there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in Segura, where they stated that one circumstance where the CAS Panel could review a field of play decision would be if a decision were made in bad faith, e.g. as a consequence of corruption (see Para, 17). The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision”.*

The Panel subscribes to the views expressed in that case and to the approach taken.

11. *In casu*, the Appellant only criticizes the security measures of the race, which allegedly were flawed and insufficient so as to allow a spectator to interfere with the regular course of the Marathon race. While this may or may not be a correct analysis, it is not for this Panel to rule on.

For the Panel to review the decision, the Appellant must show that the Panel would be justified in overturning the decision of the Jury of Appeal. In matters of this nature, the power of review of the CAS is narrow. The Appellant has failed to show what regulations or applicable rules were violated by the Jury of Appeals in its decision not to change the results of the race. The Appellant has furthermore failed to assert specific regulations which may have been grossly misinterpreted by the Jury of Appeals in rendering its decision. The simple fact that the athlete who crossed the line first was awarded the gold medal is not a decision which can be considered to have been based on bad faith, or arbitrariness on the part of the Jury of Appeal. Moreover, there is no evidence of prejudice against the Appellant or

preference for the athlete who was awarded the gold medal. There are therefore no grounds permitting the Panel to review the decision of the Jury of Appeal. The Appellant has not established that the decision of the Jury of Appeal was tainted by bad faith or arbitrariness.

12. The Athlete is requesting to be awarded a gold medal. He does not request that such gold medal change the results of the race. To award a gold medal without changing the results of the race is, however beyond, the scope of review of the CAS. Had the appealed decision been taken arbitrarily or in bad faith, the remedy would not have been a change of the announced results, let alone awarding a supplementary gold medal without changing the results of the race. The only available remedy would have been to invalidate the race and order it be rerun. There is no regulatory basis upon which the Panel could award a medal alongside the medal already won by Stefano Baldini.

For all the foregoing reasons the Appellant's request must be denied.

13. The Panel wishes to express its complete and wholehearted sympathy to the Appellant. There is however no remedy within its powers which the Panel may offer to redress his legitimate and understandable frustration and feeling of injustice.
14. The circumstances surrounding this event are extremely unfortunate. In hindsight, one can only regret that stricter security measures were not taken to avoid the mishap which befell him. The Appellant must however draw solace from the fact that he was not only awarded one of the highest distinctions possible within the Olympic movement, the Pierre de Coubertin medal, but the sportsmanship and dignity with which he faced these unfortunate events will be remembered in Olympic lore as one of the true demonstrations of what the Olympic spirit is ultimately all about. History will have a brighter and more appreciative memory of such athletic feats and moral character over that of the result of the particular race.

**The Court of Arbitration for Sport rules that:**

1. The appeal of the Brazilian Olympic Committee dated 28 September 2004 is dismissed.
  2. The appeal of Mr Vanderlei Cordeiro de Lima dated 28 September 2004 is denied.
  3. The decision of the IAAF Jury of Appeal dated 29 August 2004 stands.
- (...)