



**Arbitration CAS 2015/A/4303 Jan Lach v. World Archery Federation (WAF), award of 29 January 2016**

Panel: Prof. Philippe Sands QC (United Kingdom), Sole Arbitrator

*Archery*

*Disciplinary proceedings for violation of the WAF Eligibility Code*

*Discretion of a CAS panel under Article R57 (3) of the CAS Code*

*Criteria under Article R57 (3) of the CAS Code*

*Fair play*

1. Article R57 (3) of the Code of Sports-related Arbitration (CAS Code) applies to evidence that was not presented by a party in the course of earlier proceedings if that evidence was available to the party or could reasonably have been discovered by it before the challenged decision was rendered. If these conditions are satisfied, the CAS panel has a discretion to exclude newly presented evidence, but is not compelled to do so; it has the discretion to admit some, and to exclude other newly presented evidence. The CAS panel may act of its own volition, without necessity of a specific application by one of the parties. However, in the ordinary course of events, if the CAS panel is considering acting of its own volition to exclude newly presented evidence pursuant to Article R57 (3) of the CAS Code, it should give the parties a fair and reasonable opportunity to make representations on the issue before making a final decision.
2. In deciding whether or not to admit or exclude newly presented evidence pursuant to Article R57 (3) of the CAS Code, the applicable test is one of balancing the prejudice/hardship that would or may be suffered by the respective parties by the admission or exclusion of newly presented evidence, and deciding whether it is in the interests of justice to admit or exclude such evidence, having regard to all relevant factors. If the CAS panel is satisfied that a party has behaved in an abusive or otherwise unacceptable procedural manner in its approach to the presentation of evidence, that is likely to be a significant factor militating against the admission of newly presented evidence. However such conduct is not a pre-condition for the exclusion of newly presented evidence. When considering the exercise of its discretion under Article R57 (3) of the CAS Code, the CAS panel should have due regard to Article R57 (1) of the CAS Code according to which the CAS has full power to undertake a *de novo* hearing of the parties' dispute.
3. The spirit of fair play includes an obligation on the part of athletes and officials to pay proper respect to on field decisions of judges, and to comply in full with the designated processes and procedures for appealing against such decisions.

## I. PARTIES

1. Mr Jan Lach (the “Appellant”) is a Polish national and is the Coach and Team Manager of the Polish Archery Team.
2. The World Archery Federation (the “Respondent”) is the world governing body for the sport of archery, with its headquarters in Lausanne, Switzerland.

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions and evidence adduced. Additional facts and allegations found in the parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties and deemed admissible in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. These proceedings relate to the events of 12 August 2015, when the Appellant was attending a World Cup event in Wroclaw, Poland, in his capacity as Coach and Team Manager of the Polish Archery Team. At the time of the events in issue, the Appellant was observing a mixed team match between the USA and Belarus (the “Match”).
5. The Chairman of Judges on duty at the time of the Match was Mr Graham Potts. Also attending the Match was Mr Mario Scarzella, the Vice-President of the Respondent and the President of World Archery Europe, who is Italian.
6. The result of the Match was tied, which resulted in a “shoot-off” between the teams. The Judge in charge of the Match determined that no winner could be identified from the results of this initial shoot-off, and so ordered that a second shoot-off take place. It was this decision that led to an altercation involving the Appellant, who considered that the Judge had made a mistake in ordering a second shoot-off, rather than declaring Belarus as the winner of the Match.
7. It is common ground between the parties that the Appellant approached Mr Scarzella and complained about the decision of the Judge. However, the nature and propriety of the Appellant’s behaviour is in dispute, as discussed below.
8. Although the Appellant’s accreditation for the World Cup event was not withdrawn during the event, on 20 August 2015, the Appellant’s behaviour was referred to the Chairman of the Respondent’s Board of Justice and Ethics (the “BJE”), Mr John Chaplin.
9. The Appellant was accused of having violated Article 2.2.1 of the Eligibility Code, as contained within the World Archery Constitution and Procedures (the “Eligibility Code”), which provides

that “*Athletes and Officials shall respect the spirit of fair play and non-violence and behave accordingly on the field of play*”.

**B. Proceedings before the BJE**

10. The BJE received witness statements from a number of individuals in connection with the events of 12 August 2015.
11. By a decision promulgated on 29 September 2015, the BJE unanimously recommended that the Appellant be suspended from accreditation in any capacity for any event or activity authorised by World Archery or any Member Association for a period of twelve months from the date on which the suspension is imposed. This recommendation was supported by written reasons.
12. In a letter dated 12 October 2015, the World Archery Executive Board (the “Executive Board”) stated that it had decided to confirm the recommendation of the BJE and that, accordingly, the Appellant was suspended from accreditation in any capacity for any event or activity authorised or organised by World Archery or any Member Association for a period of twelve months from 12 October 2015 (the “Challenged Decision”).

**C. Proceedings before the Disciplinary and Awards Committee of the Polish Archery Foundation (the “PAE”)**

13. On 28 September 2015, the PAE issued a Decision that the Appellant was, in its judgment, “*not guilty of unsportsmanlike behaviour*” on 12 August 2015. The Appellant was, however, issued with a “*written reprimand*” for “*not filing an official protest*” on the day of the Match.

**III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

14. In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2013 edition) (the “Code”), the Appellant filed his Statement of Appeal on 17 November 2015.
15. In accordance with Article R51 of the Code, the Appellant informed the CAS on 30 November 2015 that his Statement of Appeal shall serve as his Appeal Brief.
16. On 27 November 2015, the Appellant requested that the matter be decided by a Sole Arbitrator. On 2 December 2015, the Respondent confirmed its acceptance of the matter being decided by a Sole Arbitrator.
17. Pursuant to Article R54 of the Code, on 14 December 2015, the parties were informed of the identity of the Sole Arbitrator who had been appointed to decide the matter, Mr. Philippe Sands Q.C.
18. In accordance with Article R55 of the Code, the Respondent filed its Answer on 21 December 2015.

19. On 28 and 29 December 2015, the parties agreed that an award be rendered on the basis of the written submissions.
20. However, on 29 December 2015, the Appellant filed some unsolicited witness statements. On 6 January 2016, the Respondent objected to the admissibility of such filing. On the same date, the CAS confirmed that the Appellant's (late) filing shall be deemed inadmissible. Furthermore, in the same letter, the CAS informed the parties that the Sole Arbitration deemed himself sufficiently well-informed to issue an Award on the basis of the written submissions, without the need for an oral hearing.
21. The Order of Procedure was sent to the parties on 7 January 2016. A signed copy of this document was returned by the Respondent on the same date and by the Appellant on 8 January 2016. By signing the Order of Procedure, the parties expressly confirmed that their right to be heard has been respected.

#### IV. SUBMISSIONS OF THE PARTIES

22. The Appellant's submissions, in essence, may be summarized as follows:
  - The Challenged Decision was "*taken in violation of rules of conduct, is inadequate and does not consider the facts*".
  - The Challenged Decision was based on "*false and ambiguous opinions*" of witnesses.
  - The Judge officiating at the Match was wrong to order a second shoot-off, because the Belarus team had, in the Appellant's opinion, visibly won the first shoot-off (a view formed on the basis of observation by the Appellant with the use of binoculars).
  - The Appellant protested to Mr Scarzella that the Judge's decision to order a second shoot-off was wrong, and that the Judge had failed to properly apply the Rules of World Archery.
  - The Appellant "*intervened to applied the principles of fair play for all teams, not just selected*" [sic].
  - The intervention of the Appellant was "*justified*", and even if the Appellant was guilty of "*raising his voice*", this reaction was "*justified in the circumstances*".
  - The Challenged Decision was "*unjust and based solely on position of selected witnesses, and not all persons involved in the incident*".
  - The sanction imposed by the Respondent "*in practice prevents him from practice as coach of the national team of the Polish Archery Federations*", and was "*very harsh*".
  - The Appellant was not sanctioned for his conduct, or accused of unsportsmanlike behaviour, during the World Cup event in August 2015.

- The Appellant “*not speak English*” [sic] and, in the circumstances, what he was saying on 12 August 2015 could not have been understood by some of the witnesses. The Sole Arbitrator understands that the reference to “*not speak English*” is meant to be an assertion that the Appellant was not speaking English when the altercation occurred, rather than an assertion that the Appellant cannot speak English *at all*. In this regard, the Sole Arbitrator notes that the statement provided by the Appellant to the BJE included the statement “*Then Mr Scarzella on my broken English-Italian replied ...*”.
- Some of the witnesses whose testimony was relied on by the BJE and the Respondent were “*not at all close*” to the incident under consideration and “*could not even hear anything*”.
- The evidence of such witnesses was not reliable.
- Furthermore, the BJE and the Respondent “*failed to take into account the views of other people who are direct witnesses of the incident*” – namely Mr Jurzak and Mr Walaszek.

23. With regard to the Appellant’s request for relief, page 4 the Statement of Appeal records that the Appellant’s representative, Mr Wosik, “*expect it to be repeal*” and “*In case the repeal is impossible I demand it to minimize it as grossly rigorous and inadequate to the charges against Mr Lach [sic]*”. The Sole Arbitrator understands the Appellant’s appeal to be essentially two-fold:

- a. First, the finding that the Appellant acted in violation of Article 2.2.1 of the Eligibility Code was wrong and should be overturned, and the disciplinary sanction should be revoked in its entirety;
- b. Secondly and in the alternative, the disciplinary sanction imposed by the Respondent was excessive/disproportionate to the offence in question, and should be reduced.

24. The Respondent’s submissions, in essence, may be summarized as follows:

- The fact that the Appellant “*did inadequately behave, violently and disrespectfully addressed Mr Scarzella and uttered statements, which were suggesting that Mr Scarzella and WA in general were acting in an unfair and corrupt manner (reference to ‘mafia’) is attested by multiple witnesses, who were directly attending the scene*”.
- The Appellant’s criticism of the BJE for failing to take into account supposedly relevant witness evidence is unjustified, having regard to the fact that the Appellant did not provide such statements at the time (but could have done so). Further, there is a live issue as to whether such witness evidence ought to be admitted in these proceedings, having regard to the provisions of Article R57 (3) of the Code.
- In any event, these witnesses were not in the immediate vicinity of the altercation, and their evidence is of no real value in determining what happened.
- The Appellant’s own evidence, as submitted to the BJE, confirmed that he did indeed “*utter reproaches of partiality*”; and all but admits that he did raise his voice.

- The Appellant had no legitimate basis for intervening during the Match.
  - The Appellant, even with the benefit of hindsight, does “*not seem to understand that a fundamental element of fair play in sport is the respect of decisions on the field of play and this a fortiori of teams which are not even involved in the competition ...*”.
  - The Appellant’s intervention was a “*violent intervention*” and wholly unacceptable.
  - The Appellant’s conduct was “*consistent with [his] inappropriate behavior displayed in Wroclaw and also and already on other previous occasions*”.
  - The 12 month sanction imposed by the Executive Board was half the maximum sanction for a violation of Article 2.2.1 of the Eligibility Code, and was appropriate in the circumstances.
  - “*Archery is a sport in which the values or courtesy, calm on the field of play (absolutely necessary to preserve the concentration of the athletes) and generally fair play in accepting field of play decisions are values, which are paramount and part of this sport fundamental values*”.
  - The Appellant’s refusal to acknowledge his wrongdoing makes it “*even more essential to apply a sanction, which will drive a clear message that he has to change his ways*”.
  - The fact that the Appellant has failed properly to control his behaviour in the past is an aggravating factor.
25. With regard to the Respondent’s request for relief, section VIII of the Respondent’s Answer states as follows:
- “The Respondent hereby respectfully requests CAS to rule that:
- *The appeal shall be rejected;*
  - *The Appellant shall bear the CAS costs for these appeal proceedings; and*
  - *The Respondent shall be awarded a contribution towards its legal fees and other costs in connection with these proceedings*”.

## V. JURISDICTION

26. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*

27. Article 1.30 of the World Archery Constitution and Procedures (the “WA Constitution”) specifically provides for an appeal to the CAS, stating as follows:

*An appeal may be made against a ratified recommendation of the Board of Justice and Ethics, against decisions concerning anti-doping rules violations ... or the equivalent highest internal tribunal of Member Associations. These appeals can only be made for decisions not related to the application of the competition rules as contained in Books 2 to 5 of the Constitution and Rules. Any appeal shall be made exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, which shall resolve the dispute definitively in accordance with the Code of sports related arbitration. The maximum time limit for the appeal is 21 days after the receipt of the original decision.*

28. It follows that, provided the Appeal was filed within the applicable time limit, the CAS does have jurisdiction to resolve the dispute between the parties. Furthermore, the jurisdiction of CAS has been confirmed by the signature of the Order of Procedure by both parties.

## **VI. ADMISSIBILITY**

29. As set out above, Article 1.30 of the WA Constitution stipulates a time limit of 21 days from receipt of the challenged decision.
30. Article R49 of the Code provides as follows:

*... The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders his decision after considering any submission made by the other parties.*

31. The Challenged Decision is dated 12 October 2015 and the Statement of Appeal was not filed by the Appellant until 17 November 2016 – 36 days later. However, according to the Appellant, the Challenged Decision was not in fact delivered to him until 29 October 2015 (see page 4 of the Statement of Appeal) – 19 days before the filing of his Statement of Appeal. The Respondent has not sought to contend that the Appellant’s Appeal to the CAS was presented out of time, nor has the CAS refused to initiate an appeal procedure. In these circumstances, the Sole Arbitrator deems the Appeal to be admissible.

## **VII. APPLICABLE LAW**

32. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

33. The “applicable regulations” in this case are to be found within the WA Constitution. The Respondent is domiciled in Switzerland and so Swiss law is the subsidiarily applicable State law.

### VIII. MERITS

- A. **A preliminary issue: the admissibility of witness evidence adduced by the Appellant in these arbitral proceedings**
34. Attached to the Appellant’s Statement of Appeal were witness statements from three Polish archery officials, namely Mr Koslowski (President of the Polish Archery Federation), Mr Walaszek (Polish Team Coach) and Mr Jurzak (Polish Team Manager). At paragraphs 62 – 63 and footnote 3 of the Respondent’s Answer, the Respondent states as follows:

*It is only in his appeal that [the Appellant] submitted the statements of two Polish Officials to which he now makes reference.*

*One may note that in view of art. R.57 § 3 of the CAS Code, the fact that these witness statements, which were already available before the appealed decision, since they were prepared and submitted in Poland in concomitant proceedings, were not provided in the proceedings before the Board of Justice & Ethics raises the issue whether they should be admitted at all in these proceedings before the CAS. A decision of the Sole Arbitrator is asked for in this respect.*

*The hearing of the Disciplinary Commission took place on September 28, 2015, i.e. one day before the Board of Justice and Ethics deliberated. It is obvious that the statements were prepared well before and, in any event, the content of the testimonies and its alleged relevant must have been known since the proceedings were started. There is no reason justifying why these witnesses were not mentioned in front of the Board of Justice & Ethics.*

35. The Sole Arbitrator understands that the Respondent’s reference to “*the statements of two Polish officials*” is a reference to the statements of Messrs Jurzak and Walaszek. In this regard, the Sole Arbitrator notes that:
- a. The Statement of Appeal refers specifically to the evidence of Messrs Jurzak and Walaszek (on pages 6 – 7), but not the evidence of Mr Koslowski; and
  - b. Paragraph 30 of the Respondent’s Answer rightly refers to the fact that Mr Koslowski provides no first hand witness evidence regarding the events of 12 August 2015, and that his evidence therefore has no material relevance as to what happened during the Match.

36. In the circumstances, the live issue for the Sole Arbitrator is whether the witness statements of Messrs Jurzak and Walaszek should be excluded from consideration.

37. Article R57 (3) of the Code provides as follows:

*The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered ....*

38. In the first instance, the Sole Arbitrator notes that although the Respondent seeks a decision regarding the admissibility of the witness statements of Messrs Jurzak and Walaszek, it does not make a specific request for that evidence to be excluded from consideration, or make detailed submissions as to why such evidence ought to be excluded from consideration.

39. In analysing this issue, the Sole Arbitrator has considered the Arbitral Award in CAS 2014/A/3518. In paragraphs 43 to 49 of that decision, the Sole Arbitrator held as follows:

*43. In its Answer, the Respondent requested to exclude the evidence submitted by the Appellant and, in its submission of 28 May 2014, reiterated such request on the grounds that it “will be deprived from its right to appeal, as there will be no further instance to adjudicate on this matter”, if its request is not granted.*

*44. The Appellant rejected the Respondent’s objection to exclude any evidence it produced before CAS on the grounds that its fundamental procedural right to be heard should be guaranteed.*

*45. Under Article R57 of the CAS Code, the Panel has full power to review the facts and the law, and it may issue a new decision that replaces the decision challenged.*

*46. Article R57.3 of the 2013 version of the CAS Code reads as follows:*

*“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply”.*

*47. According to Rigozzi, “the amendment may make sense in those CAS cases where the CAS acts as a second instance arbitral tribunal, reviewing an award rendered by another arbitral panel at the end of genuine arbitral proceedings. But in appeals proceedings against decisions rendered by the hearing bodies of the sports-governing organizations, where the curing effect of a full, de novo review by the CAS assumes all its importance, we believe panels should use the discretion now granted to them by Article R57 only in those cases where the adducing of pre-existing evidence amounts to abusive or otherwise unacceptable procedural conduct by a party”<sup>1</sup>.*

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<sup>1</sup> RIGOZZI/HASLER/QUINN, The 2011, 2012 and 2013 Revisions of the Code of sports-related Arbitration, in: Jusletter 3 June 2013, Rz 72.

48. According to Mavromati “the new limitations in the admission of new evidence [pursuant to article R57.3 CAS Code] should be interpreted in such a way as not to circumvent the core principle of the Panel’s full power of review”<sup>2</sup>.

49. For the following reasons, the Sole Arbitrator decided to dismiss Respondent’s request to “exclude the evidences presented by the Appellant, based on article R57 of the Code”:

(i) The challenged decision has been rendered by the Dispute Resolution Chamber of FIFA, not by an arbitral tribunal. To the extent that the previous instance, as in the case at hand, is not an independent arbitral tribunal but an internal body of a sports federation, the full power of review must prevail<sup>3</sup>.

(ii) It may be left open, whether Zamalek, due to the social and political instability in Egypt in the years 2012 and 2013, was unable to participate in the proceedings before the Dispute Resolution Chamber of the FIFA. However, Accra did not substantiate let alone prove that Zamalek acted abusively.

(iii) Accra’s argument that it has been deprived “from its right to appeal” should not be heard, as Accra could have submitted a request to refer the case back to FIFA, which it did not submit. Moreover, the Swiss Federal Tribunal pointed out that the requirement of having two bodies or a double degree of jurisdiction does not fall within the procedural public policy within the meaning of Art. 190(2)(e) of the Private International Law Statute<sup>4</sup>.

(iv) Finally, the Sole Arbitrator underlines that, pursuant to article 57.3 of the CAS Code, it is within his **discretion** to exclude any evidence available before the challenged decision was rendered, in other words, he is not obligated to exclude such evidence.

40. In the Sole Arbitrator’s judgment, the relevant principles regarding the application of Article R57 (3) of the Code may be distilled as follows:

- a. Article R57 (3) of the Code applies to evidence that was not presented by a party in the course of earlier proceedings (which proceedings resulted in a decision that is being challenged before the CAS – the “challenged decision”), if that evidence was available to them or could reasonably have been discovered by them before the challenged decision was rendered (hereafter referred to as “newly presented evidence”).
- b. If the conditions in (a) are satisfied, the Panel has a discretion to exclude newly presented evidence, but is not compelled to do so.
- c. The Panel has the discretion to admit some newly presented evidence, and to exclude other newly presented evidence.

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<sup>2</sup> MAVROMATI D., The Panel’s right to exclude evidence based on Article R57 para 3 CAS Code: A limit to CAS’ full power of review?, in: CAS Bulletin 1/2014, page 55/56.

<sup>3</sup> MAVROMATI (fn. 2 above) at p. 52, 55.

<sup>4</sup> FT 4A\_530/2011, at 3.3.2.

- d. It is not necessary for a party to make a specific application pursuant to Article R57 (3) of the Code in order for newly presented evidence to be excluded by the Panel, and the Panel may act of its own volition. However, in the ordinary course of events, a Panel should be cautious about excluding newly presented evidence absent a specific request from a party advocating that course of action. If the Panel is considering acting of its own volition to exclude newly presented evidence pursuant to Article R57 (3) of the Code, it should give the parties a fair and reasonable opportunity to make representations on the issue before making a final decision.
  - e. In deciding whether or not to admit or exclude newly presented evidence pursuant to Article R57 (3) of the Code, the applicable test is ultimately one of balancing the prejudice/hardship that would or may be suffered by the respective parties by the admission or exclusion of newly presented evidence, and deciding whether it is in the interests of justice to admit or exclude such evidence, having regard to all relevant factors.
  - f. If the Panel is satisfied that a party has behaved in an abusive or otherwise unacceptable procedural manner in its approach to the presentation of evidence, that is likely to be a significant factor militating against the admission of newly presented evidence. However, as a matter of principle, such conduct is not a pre-condition for the exclusion of newly presented evidence pursuant to Article R57 (3) of the Code.
  - g. When considering the exercise of its discretion under Article R57 (3) of the Code, the Panel should have due regard to Article R57 (1) of the Code which, in summary, stipulates that the CAS has full power to undertake a *de novo* hearing of the parties' dispute.
  - h. Other relevant factors in the exercise of the Panel's discretion may include the following (although it should be stressed that this is not intended to be an exhaustive or prescriptive list, and is not offered in any order of significance):
    - (i) For what period of time, prior to the rendering of the challenged decision, the party seeking to admit the newly presented evidence had such evidence in its possession or control;
    - (ii) The reason(s) why the newly presented evidence was not presented in the earlier proceedings;
    - (iii) At what stage of the CAS proceedings the newly presented evidence is disclosed/submitted; and
    - (iv) The possible probative value of the material and the consequences on the future progress of the proceedings.
41. Having regard to the principles outlined above, on the facts of the present case, the Sole Arbitrator has decided to admit all of the evidence attached to the Appellant's Statement of

Appeal, including the witness statements of Messrs Jurzak and Walaszek (the “witness statements”).

42. In determining that it is in the interests of justice to admit the witness statements, the Sole Arbitrator’s reasoning includes the following:

- a. There has been no specific request from the Respondent to exclude the witness statements, and the Appellant has not had an opportunity to respond to the points made in the Respondent’s Answer on this issue.
- b. There is no persuasive evidence that the Appellant’s failure to present the witness statements in the course of the BJE proceedings was attributable to some ulterior or improper motive on his part.
- c. The witness statements include first-hand observations regarding the events of 12 August 2015, and are therefore potentially relevant to the matter in issue.
- d. The witness statements were presented at the same time as the Appellant’s Statement of Appeal (i.e. at the initial stage of the CAS proceedings) and the Respondent has had a fair and reasonable opportunity to comment on them – an opportunity which it has in fact taken up by making written submissions on the credibility, relevance and probative value of this evidence. In that connection, admitting the evidence has not caused any delay or additional cost to be incurred by the Respondent.

**B. The events of 12 August 2015: did the Appellant, by his conduct, violate Article 2.2.1 of the Eligibility Code?**

43. The relevant question for the Sole Arbitrator is whether the Appellant’s conduct on 12 August 2015 contravened the requirement that *“Athletes and Officials shall respect the spirit of fair play and non-violence and behave accordingly on the field of play”*. In the Sole Arbitrator’s judgment, the answer to that question is yes. The Sole Arbitrator’s factual findings and reasons for that conclusion are set out below.
44. First of all, the spirit of fair play includes an obligation on the part of athletes and officials to pay proper respect to on field decisions of Judges, and to comply in full with the designated processes and procedures for appealing against such decisions.
45. In this regard, the Appellant had no authority or right to intervene and contest the on field decision of the Judge regarding the outcome of the first shoot-off, which was taken in the course of the Match. The Appellant was not an athlete or official of either of the participating teams. His intervention was both improper and contrary to the spirit of fair play.
46. Furthermore, the *nature* of the Appellant’s intervention was unprofessional and contrary to the spirit of fair play and non-violence. In the Sole Arbitrator’s judgment, having regard to the totality of the evidence presented by the parties, in the course of his altercation with Mr Scarzella and Mr Potts, the Appellant:

- a. Did shout and behave in an intimidating and aggressive fashion.
  - b. Did not act in a “civilised” manner, contrary to what is asserted in the Statement of Appeal.
  - c. Did allege that if the Italian team had been in the same position as the Belarusian team, Mr Scarzella would have intervened in favour of the Italian team and the second shoot-off would not have been run (with the Italian team instead being declared the winner).
  - d. Did thereby accuse Mr Scarzella of acting in a partial, biased and unfair manner, contrary to the interests of the Belarusian team.
  - e. Did act in a highly disrespectful manner towards representatives of World Archery.
47. In analysing the competing accounts of what happened on 12 August 2015, the Sole Arbitrator has taken into consideration the following matters:
- a. The witness statements of Messrs Potts, Scarzella, van Alten, Aubert and Esteban Suarez are all generally consistent in their recollection that the Appellant behaved in the manner summarised above.
  - b. These statements were provided within a relatively short time of the events in question (indeed, Mr Potts’ first statement is dated the same day), when events would have been fresh (or relatively fresh) in their minds.
  - c. The Appellant failed to attach a witness statement of his own to his Statement of Appeal.
  - d. The statement submitted by the Appellant in the course of the BJE proceedings was undated and unsigned (the Sole Arbitrator notes, however, that other statements submitted to the BJE were also unsigned).
  - e. The statement submitted by the Appellant in the course of the BJE proceedings did not advance a positive case as to what particular words he had and had not used in the course of the altercation on 12 August 2015.
  - f. The statement submitted by the Appellant in the course of the BJE proceedings implicitly accepted that he had accused Mr Scarzella of partiality: see the reference to “*I intervened ... in order to apply the principles of fair play for all teams and not only to the elect*”.
  - g. The Appellant’s Statement of Appeal does not expressly deny shouting at Mr Scarzella and/or Mr Potts, and appears implicitly to acknowledge that he did act in such a manner: see the reference to “*Even if Mr Lach said, raising his voice, this way of reaction was justified by the circumstances*” [sic].

- h. The witness statements of Messrs Walaszek and Jurzak, who are colleagues of the Appellant, do not materially undermine the reliability of the evidence provided by the numerous other witnesses.
48. The Sole Arbitrator does not feel able to make a definitive finding as to whether the Appellant specifically accused Mr Scarzella, or World Archery more generally, of being “*corrupt*” or “*corrupted*”. The Sole Arbitrator notes that the evidence of the witness statements exhibited to the Respondent’s Answer is somewhat inconsistent on this issue. On the one hand, Mr Aubert states that “*Mr Lach shouted at ... Mr Scarzella stating that World Archery was corrupted*”. This account is supported by Mr Esteban Suarez, who states that the Appellant was “*screaming at the Judge and then at Mr Potts and Mr Scarzella saying that everyone at World Archery was corrupt*”. However, the evidence of the other witnesses is as follows:
- a. Mr Potts does not suggest that he heard the term “*corrupt*” or “*corrupted*” being uttered by the Appellant.
  - b. Mr Scarzella states that he “*did not reply to the allusion of being accused of being partial or corrupted*” (underlining added) – in other words, it appears that Mr Scarzella (who was the principal target of the Appellant’s outburst) did not himself hear the Appellant use the term “*corrupt*” or “*corrupted*”, although that was the inference he drew from what the Appellant was saying.
  - c. Mr van Alten does not suggest that he heard the word “*corrupt*” or “*corrupted*” being uttered by the Appellant.
  - d. Mr Jagla does not suggest that he heard the term “*corrupt*” or “*corrupted*” being uttered by the Appellant (albeit Mr Jagla acknowledged that he could only hear “*bits*” of the altercation).
49. Similarly, the Sole Arbitrator is not satisfied that the Appellant used the term “*Italian Mafia*” in the course of the altercation. Although Mr Scarzella states that these words would have been “*clear to everyone*”, none of the other witnesses state that they heard the Appellant use this term.
50. Notwithstanding the above, in the Sole Arbitrator’s judgment it is clear is that the Appellant was guilty of:
- a. Making an improper challenge to the Judge’s decision in relation to the outcome of the first shoot-off; and
  - b. Committing a significant and improper verbal attack on Mr Scarzella, a senior representative of the Respondent, which impugned his integrity and professionalism.
51. In the Respondent’s Answer, it is alleged that the Appellant acted in a “*violent*” manner (see for example paragraphs 13, 59 and 74 of the Respondent’s Answer). However, none of the witnesses suggest that the Appellant used physical force against Mr Potts, Mr Scarzella or anyone else; and the Sole Arbitrator finds that he did not do so. To the extent that there was any violence, the evidence indicates it was limited to verbal violence.

52. However, the Sole Arbitrator accepts that behaving in an intimidating and aggressive fashion (as the Appellant did), is not only contrary to the “*spirit of fairplay*” but also contrary to the “*spirit of non-violence*”, which is a broader concept than the actual use of physical force against another person.
53. In all the circumstances, the Sole Arbitrator concludes that the Appellant did, by his conduct on 12 August 2015, violate Article 2.2.1 of the Eligibility Code.

### **C. The disciplinary sanction**

54. The Challenged Decision was that the Appellant should be “*suspended from accreditation in any capacity for any event or activity authorised or organised by World Archery or any Member Association for a period of twelve months from the 12 October 2015*”.
55. Appendix 3, Articles 5.1 and 5.2 of the WA Constitution provide as follows:

*“5.1 Suspension can be from three months up to two years, from the date of the decision by the Executive Board or Congress.*

*5.2 A suspension can be general or partial, limited to certain rights or activities, appointments or eligibility to World Archery recognised events”.*
56. Pursuant to Article R57 (1) of the Code, the Sole Arbitrator “*may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.
57. In this case, the Sole Arbitrator considers that he has sufficient evidence from which to make a final determination on the question of disciplinary sanction, and that it is in the interests of justice for him to do so.
58. In the Sole Arbitrator’s judgment, it is important to have regard to the principle of proportionality when considering what constitutes an appropriate disciplinary sanction.
59. The Sole Arbitrator accepts that the Appellant’s conduct amounted to a significant transgression and breach of the important principles expressed in Article 2.2.1 of the Eligibility Code. It was not a breach that can be regarded as insignificant or trivial.
60. In the Sole Arbitrator’s judgment, aggravating factors in this case are:
  - a. The Appellant’s intervention disrupted the Match at a crucial stage.
  - b. In the sport of archery, it is particularly important that quiet and calm conditions are maintained during a Match, in order for athletes to concentrate effectively and perform to the best of their ability. The Appellant’s behaviour undermined this state of affairs.

- c. The Appellant was not a representative of the participating teams and it cannot be said that he was seeking to defend the interests of his team by intervening as he did (which would perhaps be more understandable, albeit still improper).
  - d. The Appellant took some time to calm down (and this was not an instance of, for example, a one-off remark made in the heat of the moment).
  - e. The Appellant was not only aggressive and intimidating in his demeanour and tone; in addition, his words included a slur on the integrity and professionalism of Mr Scarzella (in circumstances where the Appellant had never previously raised any formal complaint or grievance regarding Mr Scarzella's past conduct, let alone had any such complaint substantiated by the BJE or other regulatory body).
  - f. The Appellant has continued to maintain that his behaviour was wholly without fault.
61. In the Sole Arbitrator's judgment, mitigating factors in this case are:
- a. The Appellant genuinely believed that the Judge had made an error of judgement, and that the Belarusian team had been treated unjustly.
  - b. The Appellant did not use any physical force in the course of the altercation.
  - c. The Appellant did not use words that threatened the use of physical force.
  - d. There is no evidence in the record of prior behaviour of this kind that has given rise to proceedings and a sanction by the BJE.
62. In regard to the last point, in considering the issue of sanction, the Sole Arbitrator has not been influenced by the statement in paragraph 83 of the Respondent's Answer that this "*is not the first time that Mr Lach did not control his behaviour*". The Sole Arbitrator has been presented with very limited information regarding the circumstances of the previous warnings issued to the Appellant, which were not the subject of any proceedings before the BJE.
63. Neither party has adduced any examples of the way in which the BJE and the Executive Board have dealt with similar disciplinary issues in other cases; and in the circumstances, no specific allegation of inconsistent treatment is advanced by the Appellant in support of an argument that his sanction was disproportionate.
64. Notwithstanding the above, the Sole Arbitrator is responsible for looking at matters afresh and determining what constitutes an appropriate sanction, having regard to his factual findings and the relevant provisions of the WA Constitution.
65. Having carefully considered the evidence and submissions presented by the parties, and having regard to the matters outlined above, the Sole Arbitrator's decision is as follows:

*The Appellant shall be suspended from accreditation in any capacity for any event authorised or organised by World Archery or any Member Association for a period of eight months from 12 October 2015.*

66. The practical effect of this decision is that:

- a. The Appellant is not suspended from managing or coaching the Polish Archery Team outside of events.
- b. However, the Respondent will be entitled to withhold accreditation from the Appellant until 12 June 2016, in respect of any event authorised or organised by World Archery or any Member Association.

67. The Sole Arbitrator considers that this is a proportionate sanction in all the circumstances, which recognises the Appellant's legitimate interest in carrying out his occupation, whilst at the same time fairly reflecting the nature and gravity of his conduct.

## ON THESE GROUNDS

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

1. The appeal filed by Mr Jan Lach on 17 November 2015 against the decision rendered by the Board of Justice & Ethics of the World Archery Federation on 12 October 2015 is upheld in part.
2. The decision rendered by the Board of Justice & Ethics of the World Archery Federation on 12 October 2015 is amended as follows:

Mr Jan Lach shall be suspended from accreditation in any capacity for any event authorised or organised by World Archery or any Member Association for a period of eight months from 12 October 2015.

(...)

5. All other motions or prayers for relief are dismissed.