



**Arbitration CAS 2018/A/5641 Cyril Sen v. International Table Tennis Federation (ITTF),
award of 9 August 2018**

Panel: Mr Andrew de Lotbinière McDougall (France), Sole Arbitrator

Table tennis

Disciplinary sanction for inappropriate invitation

Reliability of witness statements

Behaviour potentially qualifying as harassment

1. It is a generally accepted practice that witness statements are prepared with the assistance of lawyers. However, a party's representative should seek to ensure that a witness' statement reflects such witness' own account of relevant facts, events and circumstances.
2. Pursuant to clause 7.3 of the ITTF's Anti-Harassment Policy and Procedures, an act of harassment takes many forms but can generally be defined as, persistent comment, conduct, or gesture directed toward an individual or group of individuals, which is insulting, humiliating, malicious, degrading, offensive or abusive.

I. PARTIES

1. Mr Cyril Sen (the "Appellant" or "Mr Sen") is a Malaysian table tennis umpire and umpire trainer and evaluator.
2. The International Table Tennis Federation (the "Respondent" or "ITTF") is a not-for-profit organization governed by Article 60 and its derivatives of the Swiss Civil Code and consists of the affiliated table tennis associations governing the sport in accordance with the principles of the ITTF in any territory generally regarded as constituting a national, historical or other unity.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced and at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

4. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

B. Event that led to the complaint procedure against Mr Sen

5. On 30 May 2017, an ITTF Referee and Umpires reception took place at the Linder Congress Hotel, Düsseldorf, Germany in the framework of the ITTF World Table Tennis Championship. Mr Sen attended this reception in his capacity as ITTF evaluator for umpires and coordinator of the Advance Rules Exam (ARE) for umpires. During this event, Mr Sen took part in a conversation held among Dr Neeru Malik, Mrs Celeste Rato and Mrs Pari Marandi.
6. In the course of this conversation, Mr Sen told Dr Malik, a White Badge Indian umpire who had sat the ARE, that she did not pass the exam.
7. There are two different accounts in relation to what was said in the course of the conversation and interaction among the above noted people at the reception. The comments allegedly made by Mr Sen were the object of a complaint raised by Dr Malik and of a subsequent arbitration procedure before the ITTF. This procedure resulted in a disciplinary sanction issued by the ITTF Executive Committee against Mr Sen, which is the object of the Appeal filed before CAS.

C. Complaint procedure

8. Dr Malik filed a complaint with the ITTF against Mr Sen dated 20 June 2017 (received by the ITTF on 27 June 2017), pursuant to the ITTF's Anti-Harassment Policy and Procedures (the "AH-PP"), which is part of the ITTF Handbook. In her complaint, Dr Malik raised a series of charges against Mr Sen in relation to comments he reportedly made to her in the course of the conversation they had at the above-noted reception.
9. Dr Malik's complaint may be summarized as follows:
 - Mr Sen allegedly referred to Indian Umpires as "*useless and cultureless*". He reportedly called them "*poor, not having any command over English*" and said that they "*do not have any knowledge about the interpretation of laws*". He also supposedly said that mentors in India "*are not good enough with their teaching skills and knowledge*".
 - He allegedly asserted that the Table Tennis Federation of India ("ITTFI") "*was weak in administration and indulge in dirty politics*".
 - Mr Sen supposedly asked Dr Malik to "*come to his room saying that he will teach [her] everything*".
 - And Mr Sen's comments "*should be tried under Clause/ sub-clause 7.3.2.1 (Written or verbal abuse or threats), 7.3.2.2 (Inappropriate oriented comments), 7.3.2.5 (Shouting and/ or bullying) and 7.3.2.9 (Intimidating remarks and invitation or familiarity)*".

10. On 14 July 2017, Mr Yusuf (Joe) Carrim, President of South African Table Tennis Board and member of ITTF Board of Directors, and Mrs Polona Cehovin, ITTF Education and Training Director, were appointed by the ITTF as harassment officers pursuant to Clause 7.5 of the AH-PP. The complaint was forwarded to the harassment officers on this date.
11. The harassment officers sent a communication to Dr Malik on 18 July 2017 advising her on the procedures to be followed and her rights in the matter. Dr Malik did not reply to this communication. The harassment officers sent reminders to Dr Malik on 25 July 2017 and 4 August 2017.
12. On 6 August 2017, Dr Malik replied requesting the harassment officers to follow the arbitration procedure established under Clause 7.6.2.1.2 of the AH-PP. In this correspondence, she mentioned that before submitting her complaint she had communicated the incident to the General Secretary of the TTFI (Mr M. P. Singh) and a member of the Board of Directors of the ITTF (Dr Dhanraj Choudary) (the Respondent confirmed that this meeting occurred on 1 June 2017). Dr Malik also noted that she had had a meeting with Mr Bruce Burton, Executive Vice-President of the ITTF, in which she narrated the incident and he explained the procedure to her (the Respondent confirmed that this meeting occurred on 4 June 2017).
13. On 7 August 2017, the harassment officers asked Dr Malik to submit a list of potential witnesses.
14. By letter dated 7 August 2017, Mr Sen was notified of the complaint (the harassment officers' Report indicates that Mr Sen received the notification on 8 August 2017, but Mr Sen had been informed of the nature of the complaint by Mr Burton on 2 June 2017).
15. On 12 August 2017, Mr Sen replied to Dr Malik's allegations and submitted along with his response two statutory declarations, one made by Mrs Rato and one made by Mrs Marandi.
16. Mr Sen's response may be summarized as follows:
 - During the conversation at the reception Mr Sen mentioned to Dr Malik that she did not pass the ARE. Both Dr Malik and Mrs Rato (Mrs Rato sat the exam twice and passed the second time) were interested to know which questions they got wrong. To this request, Mr Sen replied: *"I would need to first go and check my PC in my room as their answers to the questions are in my PC. I then said that if on any day they happened to drop by my room, or see me in the hall or dining, etc, they could stop me and ask me, and I would be able to give them a general overview of where they went wrong"*.
 - Dr Malik allegedly mentioned to him on several occasions during the course of the conversation the following: *"if you want you can help me"*. Mr Sen insisted that the results could not be changed.
 - According to Mr Sen, the allegations put forward by Dr Malik are not true. The statutory declarations corroborate this as they note the following:

- *“At no time did Mr Cyril Sen harass or attempt to harass Mrs Neeru Malik nor did he ever speak badly about her association, the Table Tennis Federation of India or the umpires in India”.*
- *“I did not see any problem with what Mr Cyril said as I believe he was trying to be helpful”.*

17. On 12 August 2017, the harassment officers sent Dr Malik a reminder to submit a list of witnesses.
18. On 15 August 2017, the harassment officers requested a verbal communication with Dr Malik. During this communication, Dr Malik indicated that the potential witnesses would be Mrs Rato and Mrs Marandi. She alleged that they would be reluctant to serve as a witness for fear of prejudicing future appointments as international umpires.
19. On 16 August 2017, the harassment officers learned that, on 2 June 2017, the TTFI had submitted a letter to Mr Burton in relation to Dr Malik’s complaint.
20. The harassment officers issued a Report to the ITTF Executive Committee, and on 9 March 2018, the ITTF Executive Committee imposed a Warning for a period of one year on Mr Sen. Both the Report and the Executive Committee’s decision are summarized below.

D. Report of the harassment officers

21. The harassment officers issued a Report to the ITTF Executive Committee providing that:

“Having considered all the evidence before us and acknowledging clause 7.6.3 the harassment officers findings as follows:

- *The sworn affidavits were dated before the notice was received and being very similar in wording and style suggests coaching and should be treated as unreliable*
- *Dr Malik was unable to provide a detailed account of the alleged incident and her inability to provide statements from her witnesses presents a challenge in her defence*
- *Mr Sen’s response was detailed and well prepared. The acquisition of the sworn affidavits prior suggests that Mr Sen’s preparation for the case started before the case was formally introduced to him*
- *The information from the TTFI on earlier infractions by Mr Sen could not be considered in this case”.*

22. The Report contained the following recommendations:

“Whilst the harassment officers could not conclusively decide on the allegations levelled at Mr Sen and the inability of Dr Malik to provide the necessary witnesses to support such allegations, the officers decided to recommend that the ITTF Executive cautions Mr Sen and institute a suspended sentence, suspended for a period of 12 months.

- *Dr Malik be advised that her lack of supporting evidence makes it difficult to institute a sentence other than a caution and that the ITTF would support her as per clause 7.10.1.5”.*

E. ITTF Executive Committee’s Decision

23. On 9 March 2018, the ITTF Executive Committee resolved as follows in its decision (“Decision”):
- In relation to the first two charges, the Committee found that Mr Sen is *“Not guilty, as no evidences are found”*.
 - In relation to the third charge, the Committee considered that *“Regardless of the motivation that the respondent had when formulating such invitation, and because of the position of power the respondent vs the complainant (evaluator vs umpire evaluated), that the invitation is inappropriate (ITTF Handbook 7.3.2.9)”*. The ITTF Executive Committee therefore decided to *“impose a Warning for a period of one year which carries, based on the case procedure from 01.12.2017 until 30.11.2018”*.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 20 March 2018, the Appellant submitted a Notice of Appeal. On 26 March 2018, he submitted a Statement of Appeal (to be considered as his appeal brief) against the Decision, in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”).
25. On 5 April 2018, the Respondent informed the CAS Court Office that it had retained Prof. Dr Anne Jakob as its counsel.
26. On 18 April 2018, the Respondent filed its answer pursuant to Article R55 of the Code.
27. On 25 April 2018, the Respondent requested the Sole Arbitrator to issue an award based on the parties’ written submissions.
28. On 26 April 2018, the CAS Court Office granted an extension until 9 May to the Appellant to inform whether he prefers a hearing to be held on the matter.
29. On 4 May 2018, pursuant to Article R54 of the Code, the President of the CAS Appeals Arbitration Division appointed Mr Andrew de Lotbinière McDougall, Attorney-at-Law, Paris, France, as Sole Arbitrator.
30. On 7 May 2018, the Appellant submitted additional observations and exhibits.
31. On 8 May 2018, the Appellant informed by e-mail that he agreed on the Sole Arbitrator issuing an award without a hearing.

32. On 14 May 2018, the Respondent submitted additional observations.
33. On 16 May 2018, on behalf of the Sole Arbitrator, the CAS Court Office informed the parties that their additional observations would be considered unless an objection is raised. Both parties agreed that these observations be admitted in the CAS file.
34. On this same date, the parties were informed that the Sole Arbitrator decided to hold a hearing pursuant to Article R57 of the Code as he does not deem himself sufficiently well-informed to decide the case based solely on their written submissions. The parties were also informed that the Sole Arbitrator would like to examine, in accordance with Article R44.3: the Appellant, Mrs Marandi, Mrs Rato and Dr Malik.
35. On 25 May 2018, on behalf of the Sole Arbitrator, the CAS Court Office called the parties to appear at the hearing on 29 May 2018 at 1:00 pm CEST at the CAS Court Office.
36. The parties signed the Order of Procedure issued by CAS on 29 May 2018.
37. On 29 May 2018, in accordance to Article R44.2 of the Code, the oral hearing was conducted at the CAS Headquarters in Lausanne, Switzerland. The Sole Arbitrator was assisted by Pauline Pellaux, Counsel to the CAS. The following persons attended the hearing via Skype video-conferencing together with telephone conferencing:
 - Mr Sen.
 - Prof. Dr Jakob.
 - Mrs Rato.
 - Mrs Marandi.
 - Dr Malik.

IV. SUBMISSIONS OF THE PARTIES

38. The Appellant's submissions may be summarized as follows:
 - The ITTF erred in law and in fact given that: i) the evidence on charge No. 3 is unreliable based on the fact that Dr Malik was found lying in relation to charges No. 1 and No. 2; ii) the ITTF failed to take into account that Dr Malik had given contradictory versions and or evidence related to the incident; iii) the ITTF attached undue weight and relied on non-contemporaneous, unreliable and conflicting evidence; iv) the ITTF failed to take into account that the complaint was lodged one month after the incident; and v) Dr Malik's statement asserting that Mr Cyril Sen had invited her "*to his room saying he will teach me everything*" is untrue and uncorroborated.

- The Appellant never said the words *“will teach you everything”*. The ‘invitation’ must be looked at in its context and surrounding circumstances as it *“was made to both the complainant and Celeste Maria Cobelo Araujo Rato in genuinely wanting to correct mistakes made in an examination”*.
 - The ITTF failed to take into consideration the witness statements of Mrs Rato and Mrs Marandi and give sufficient weight to their independent testimony. Moreover, the witnesses did not find the so-called invitation *“abusive nor inviting in a sexual context”*. As a result, the ITTF *“failed to take into account that the ‘invitation’ was not offensive which could cause sexual annoyance to the complainant”*.
 - The ITTF also failed to take into consideration the following declarations made by the witnesses:
 - Statements by Mrs Marandi:
 - *“Mr Cyril Sen told Mrs Neeru Malik and Celeste Araujo Rato that they could drop by his room or anywhere they see him to ask him to tell them which rules they got wrong”*.
 - *“I did not see any problem with what Mr Cyril Sen had said as I believe he was trying to be helpful to both of them”*.
 - *“Mrs Neeru Malik told me that since Mr Cyril Sen had said that she could go to his room to ask about the exam, she would like to go and talk to him but that she did not want to go alone. I told Mrs Neeru Malik that if she wanted, I would go with her”*.
 - Statements by Mrs Rato:
 - *“He then went on the say to the both of us that at any time we could drop by his room or go to the office in the hall to discuss common mistakes on the rules”*.
 - *“I did not see any problem with what Mr Cyril Sen had said as I believe he was trying to be helpful to us”*.
 - *“Mrs Malik was my roommate in Dusseldorf and never did she once mention that she felt unhappy or uncomfortable with what Mr Cyril Sen had said during our conversation at the reception”*.
 - *“A number of times Mrs Malik told Mr Cyril Sen, ‘if you want, you can help me’ and each time Mr Cyril Sen said that he could not change the result of the exam”*.
39. In his Statement of Appeal, the Appellant submitted the following request for relief: *“That the decision of the ITTF dated 9.3.2018 referring to charge No.3 be set aside and the appeal be allowed”*.
40. The Appellant’s additional observations may be summarized as follows:

- Dr Malik did not submit evidence to prove the charges. This is confirmed by the harassment officer's Report when stating: *"Dr Malik was unable to provide a detailed account of the alleged incident and her inability to provide statements from her witnesses presents a challenge in her defence"*.
 - The Report erroneously found that *"[t]he acquisition of sworn affidavits prior suggests that Mr Sen's preparation for the case started before the case was formally introduced to him"* given that Mr Sen was informed of the complaint prior to his receipt of Dr Malik's official complaint. His preparation started as soon as he was informed of the incident. Mr Sen learned of the complaint through the following communications:
 - On 2 June 2017, Mr Burton informed Mr Sen of a formal complaint submitted by the TTFI.
 - On 5 July 2017, Mr Burton submitted a copy of the TTFI letter of complaint to Mr Sen.
 - On 7 August 2017, Mr Sen received a letter from the Table Tennis Association of Malaysia ("TTAM") confirming that the TTFI had officially informed the TTAM of the complaint, requesting the TTAM to take necessary action.
 - There is a possibility that Dr Malik was pressurized by a third party to put forward the complaint.
 - It is not correct, as asserted by the Respondent, that neither the case nor the warning will be made public and there will be no stigmatization or degradation. The TTFI made the matter public to the TTAM. Since the matter arose, the Appellant has *"been deprived by the TTAM on more than one occasion of his participation in ITTF activities"*.
41. The Appellant further requested that each party bear its own costs.
42. The Respondent's submissions may be summarized as follows:
- The Sole Arbitrator can only review whether the fact of the invitation of Dr Malik to the Appellant's room was correctly established, whether it constitutes a breach of the AH-PP, and whether the sanction imposed is correct and reasonable. The 'invitation' fact was correctly established, and the sanction imposed was reasonable.
 - The ITTF did not find that Dr Malik was lying in relation to charges No.1 and No 2. It found that the Appellant was *"not guilty because of lack of evidence"* in relation to those two charges, which is different. Dr Malik later clarified the contradiction in relation to the date of the incident.
 - The witnesses named by Dr Malik could not testify on her behalf because they had each given a statutory declaration on behalf of the Appellant on 7 August 2017. The statutory

declarations submitted by the Appellant “*could not be taken into consideration but only used as an indication*” given that they “*were given and signed on a date on which the Appellant could not have known that a complaint procedure against him had started*” as the notice of the complaint was received on 8 August 2017. Furthermore, the “*declarations are very similar*” and that “[*i*]t is *without doubt*” that the Appellant helped the witnesses in their drafting.

- In relation to the date on which the written complaint was filed, “[*n*]either the AH-PP nor any other legal norm requires the complainant to file a written complaint”. In any case, Dr Malik informed the TTFI a day after the incident and filed a verbal complaint with the ITTF Executive Vice-President on 4 June 2017.
- The Appellant was found guilty of inviting Dr Malik to his room. Contrary to the Appellant’s assertions, the Decision makes no reference to the use of the words “*will teach you everything*”. This invitation is confirmed by the Appellant’s own evidence, as in his response to the harassment officers he expressly states that he said to Dr Malik “*that if one day they happened to drop by my room (...) I would be able to give them a general overview of where they went wrong*”. This is also confirmed by bullet point 9 (“*we could drop by his room*”) and 12 (“*we could drop by his room*”) of the statutory declarations of Mrs Rato and Mrs Marandi, respectively.
- The invitation to Mr Sen’s room constitutes harassment under Clause 7.3.1 of the AH-PP. The Appellant, “*in his capacity as an evaluator must be objective and neutral to everyone. Any semblance of preference must be avoided. For this reason, the invitation was inappropriate*”. Additionally, as an evaluator, the Appellant is in a “*situation of power regarding the umpires*” and “*is requested not to use this power or superiority to intimidate the umpires*”.
- The fact that Mrs Rato and Mrs Marandi found that Mr Sen was trying to be helpful was taken into consideration. However, Dr Malik “*is a different person from a different country with a different culture, religion and background*”. Dr Malik further expressed that she did not want to go to the Appellant’s room alone. Dr Malik “*would not have said that, if for her there was no problem with the invitation*”. Therefore, the invitation “*was correctly evaluated as an intimidating invitation under clause 7.3.2.9 of the AH-PP*”.
- The disciplinary measure is appropriate and necessary to make sure the AH-PP is being effective. The ITTF “*took all caution to apply the disciplinary measure to the lowest degree*”. Moreover, “*there was no choice not to impose a sanction as once a breach of the AH-PP was established, a disciplinary measure must be imposed*”.

43. The Respondent submitted the following request for relief:

“Based on the facts and merits established above, the appeal filed by the Applicant against the decision of the Respondent shall be dismissed and the decision of the Respondent shall be confirmed”.

44. The Respondent’s additional observations may be summarized as follows:

- The Appellant does not accept that his own defence and the statements of the witnesses prove that in fact he invited Dr Malik to his room. Therefore, the harassment officers concluded that Dr Malik did not lie.
 - The other statements made by the Appellant in his answer on 7 May 2018 are “*irrelevant if not speculation*”. There is no proof that Dr Malik was pressurized. Moreover, there would be no reason why Dr Malik could not ask for help to avoid misunderstanding.
 - Independently of the date on which the Appellant found out about the complaint, it is clear that the two statutory declarations were pre-formulated.
 - The Appellant is wrong in the assumption that by informing the TTAM the case becomes public. Non-endorsement of the Appellant by the TTAM may have other reasons but are not necessarily linked to the case.
 - The Appellant is still reluctant to accept that his behavior was inappropriate, which shows that the Warning is necessary to effectively apply the AH-PP and to avoid any comparable situations in the future.
45. The Respondent does not accept to bear any cost in this procedure.

V. JURISDICTION

46. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

47. The jurisdiction of the CAS, which is not disputed, derives from Clause 7.8 of the AH-PP. Clause 7.8 provides:

7.8.1 Both the complainant and respondent shall have the right to appeal the decision. A notice of intention to appeal, along with grounds for the appeal must be provided to the Executive Committee within 14 days of the complainant or respondent receiving the formal notification of the outcome of the case.

7.8.2 The Executive Committee shall forward the appeal to the Court of Arbitration of Sport.

48. The parties confirmed their acceptance of the CAS’s jurisdiction over the dispute by signing the CAS Order of Procedure on 29 May 2018.
49. It is therefore established that the CAS has jurisdiction over the present dispute.

VI. ADMISSIBILITY

50. According to Clause 7.8 of the AH-PP, the Appellant has the right to appeal the decision within 14 days of the reception of the formal notification of the outcome of the case.
51. The ITTF Executive Committee issued the Decision on 9 March 2018. The Appeal was filed on 20 March 2018. Therefore, Mr Sen appealed the decision in due time.

VII. APPLICABLE LAW

52. Article R58 of the Code provides as follows:

“The Panel shall 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”.

53. In the present case, the parties did not make any choice of any particular rules of law.
54. It follows that the ITTF Rules shall apply and that Swiss law shall apply, on a subsidiary basis, given that the ITTF is based in Switzerland.
55. The AH-PP is the most important regulation in this case, while its Clause 7.3.2.9 is the central one. This Clause reads as follows:

“For the purposes of this policy, any form of harassment is defined as unwelcome, often persistent, attention. It may include particularly, but not limited to, discrimination or harassment on the basis of gender, religious background, race:

7.3.2.1 Written or verbal abuse or threats

7.3.2.2 Inappropriately oriented comments

7.3.2.3 Jokes, lewd comments or innuendoes

7.3.2.4 Taunts about body, dress, marital status or sexuality

7.3.2.5 Shouting and/ or bullying

7.3.2.6 Ridiculing or undermining of performance or self-respect

7.3.2.7 Sexual, homophobic, racial or other discriminatory graffiti

7.3.2.8 Practical jokes

7.3.2.9 Intimidating remarks, invitations or familiarity

7.3.2.10 *Physical contact, fondling, pinching or kissing*

7.3.2.11 *Vandalism*

7.3.2.12 *Offensive phone calls or photos*” (emphasis added).

VIII. MERITS

56. Further to Article R57 of the Code, the Sole Arbitrator “*has full power to review the facts and the law*” and “*may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.
57. The first issue is whether the Decision was well-founded.
58. While the Decision does not refer expressly to the Report, no other evidence by way of document or witness was submitted to establish anything to the contrary nor was anything argued to the contrary. In its submission, the Respondent recognizes that the Decision is based on the Report: “[*a*]fter having discussed the report of the harassment officers to the Executive Committee, decided to have the finding and recommendation by the harassment officers (...) reviewed by lawyers. After their evaluation, the Executive Committee concluded to follow the recommendations by the harassment officers to caution the Appellant”. Thus, the Sole Arbitrator is comfortably satisfied that the Decision was indeed based on the Report.
59. Section 5 of the Report sets out the harassment officers’ “*Findings and Recommendation*”. Their “*Findings*” upon which their “*Recommendation*” is based consist of the following four bullet points (also referred to above):
- *The sworn affidavits were dated before the notice was received and being very similar in wording and style suggests coaching and should be treated as unreliable*
 - *Dr Malik was unable to provide a detailed account of the alleged incident and her inability to provide statements from her witnesses presents a challenge in her defence*
 - *Mr Sen’s response was detailed and well prepared. The acquisition of the sworn affidavits prior suggests that Mr Sen’s preparation for the case started before the case was formally introduced to him*
 - *The information from the TTFI on earlier infractions by Mr Sen could not be considered in this case.*
60. For the following reasons, the Sole Arbitrator is comfortably satisfied that these Findings do not support the Recommendation made.
61. To begin, the first and third bullet points in the Report’s Findings are unsupported and wrong:

- a. Mr Sen explained that he was informed of the nature of the complaint two months before the statutory declarations were submitted. Mr Sen noted that Mr Burton informed him of a complaint on 2 June 2017. This is consistent with Dr Malik’s correspondence dated 6 August 2017, the harassment officers’ Report and the Respondent’s submission indicating that Dr Malik informed the ITTFI about the incident on 1 June 2017. Mr Burton forwarded the ITTFI’s letter to Mr Sen on 5 June 2017. The content of this letter is essentially the same as the complaint submitted by Dr Malik on 20 June 2017. This explains why the “*sworn affidavits were dated before the notice was received*” and why the Appellant’s “*preparation for the case started before the case was formally informed to him*”.
- b. Mr Sen, Mrs Rato, and Mrs Marandi all explained in their testimony at the hearing (Mrs Rato and Mrs Marandi testifying first and separately without hearing each other’s testimony) that Mr Sen asked each of Mrs Rato and Mrs Marandi if they would agree to provide such declarations; they each agreed; each of Mrs Rato and Mrs Marandi provided their evidence orally and separately to Mr Sen’s lawyer at the beginning of July 2017; Mr Sen’s lawyer provided a draft of each respective declaration to Mrs Rato and Mrs Marandi separately, giving each of them an opportunity to correct it before finalizing and signing, which each of them did separately; neither Mrs Rato nor Mrs Marandi has ever seen the other’s declaration, nor did they discuss their evidence with Mr Sen or with each other after submitting their declarations and prior to the hearing; and each of Mrs Rato and Mrs Marandi confirmed the truth and accuracy of their declarations at the hearing, as noted above testifying separately without hearing each other’s evidence and without seeing each other’s declarations, and confirmed that their evidence was given freely and not forced; they also each noted that Dr Malik never asked either of them to be a witness.
- c. Thus, there was nothing untoward or unusual in the preparation of or timing of the submission of the statutory declarations. Indeed: “*It is a generally accepted practice that witness statements are prepared with the assistance of lawyers*” (KOCUR M., in GESSEL-KALINOWSKA VEL KALISZ (ed.), *Witness Statements in International Arbitration*, 2015, p. 170.). This has also been recognized by soft law principles: “*A Party Representative may assist Witnesses in the preparation of Witness Statements and Experts in the preparation of Expert Reports*” (Guideline 20, IBA Guidelines on Party Representation). The IBA Guidelines further establish: “*A Party Representative should seek to ensure that a Witness Statement reflects the Witness’s own account of relevant facts, events and circumstances*” (Guideline 21, IBA Guidelines on Party Representation). Thus, the fact that the statutory declarations were prepared with the “assistance” of Mr Sen’s lawyer does not raise an issue *per se*. The validity of a witness statement would be questionable if through such “assistance” the party representative seeks to describe facts that the witness does not believe, which is not the case as explained above (point b). And the fact that the declarations were submitted one day after official notification of the complaint is irrelevant given that Mr Sen had been notified of the nature of the complaint well before, and his lawyer had obtained the witness evidence in early July, a month before the declarations were finalized and submitted.
- d. Accordingly, the statutory declarations are credible, reliable, and consistent with the evidence, all to the Sole Arbitrator’s comfortable satisfaction.

62. The second bullet point in the Findings of the Report states unequivocally that *“Dr Malik was unable to provide a detailed account of the alleged incident and her inability to provide statements from her witnesses presents a challenge in her defence”*. This militates against the Recommendation that was made in that the complainant was unable to provide supporting evidence from other witnesses (the other witnesses present giving evidence contrary to hers) and in any event was unable to provide a detailed account of what she says happened.
63. The fourth bullet in the Findings is irrelevant in that no evidence of prior infractions was submitted, as confirmed by the Respondent’s counsel to the Sole Arbitrator at the hearing in response to a direct question by the Sole Arbitrator in this regard.
64. Thus, the foundation upon which the Recommendation was made and thus upon which the Decision was made does not support the Recommendation and thus does not support the Decision. The Findings are either wrong, irrelevant or simply conclude that there is no evidence. The Recommendation and the Decision were unfounded in that the Findings do not support them.
65. In addition to assessing the credibility and reliability of Mrs Rato’s and Mrs Marandi’s evidence, the Sole Arbitrator makes the following observations regarding Mr Sen’s and Dr Malik’s evidence.
66. Contrary to Mrs Rato and Mrs Marandi, Dr Malik’s oral testimony was unsupported by anything in the file, including the harassment officers’ Findings and ITTF Executive Committee Decision. Her oral testimony was no clearer at the hearing than in the harassment officers’ assessment. Moreover, Dr Malik was aggressive and somewhat belligerent in her oral testimony, requiring that the Sole Arbitrator interrupt her on more than one occasion. Granted that Dr Malik was questioned at the hearing by Mr Sen, who represented himself in this proceeding, but Dr Malik’s demeanour and answers were such that the Sole Arbitrator is not comfortably satisfied as to their credibility and reliability and prefers the evidence of Mrs Rato and Mrs Marandi.
67. Mr Sen’s oral evidence at the hearing was measured, candid, and supported by the evidence in the file. There were no inconsistencies, and the Sole Arbitrator is comfortably satisfied that it was consistent with Mrs Rato’s and Mrs Marandi’s and thus credible and reliable.
68. Next, the Sole Arbitrator must consider whether the evidence in this arbitration supports the Decision or a sanction of any kind.
69. The parties agree, as does the Sole Arbitrator, that the relevant provision at issue in this case is Clause 7.3.2.9 of the AH-PP and whether there was *“unwelcome, often persistent, attention”* in the form of *“invitations”* within the meaning of that Clause. If so, then the AH-PP will have been breached, and a sanction will be in order.
70. Dr Malik’s complaint asserts that Mr Sen *“asked her to go to his room so he could teach her everything”*.

71. Mr Sen's evidence is that he said: *"if on any day they happened to drop by my room, or see me in the hall or dining, etc, they could stop me and ask me, and I would be able to give them a general overview of where they went wrong"*.
72. Mrs Marandi's evidence is: *"Mrs Neeru Malik wanted to know which questions she got wrong. As both Mrs Neeru Malik and Mrs Celeste Araujo Rato had sat the exam, Mr Cyril Sen said to them that he could not show them the questions but could tell them which rules they got wrong. Mr Cyril Sen told Mrs Neeru Malik and Mrs Celeste Araujo Rato that they could drop by his room or anywhere they see him to ask him to tell them which rules they got wrong"*.
73. Mrs Rato's evidence is: *"As Mrs Malik was very keen to know which questions she got wrong, Mr Cyril Sen said that he could not discuss the details of the exam but that we could discuss about common mistakes on the rules. Mr Cyril Sen then said to both of us that he would first have to return to his room to check the details as his computer was in his room with the necessary information. He then went on to say to the both of us that at any time we could drop by his room or go to the office in the hall to discuss about common mistakes on the rules"*.
74. The ITTF Executive Committee resolved: *"In relation to the complaint about inviting Dr Malik to the room of Mr Sen and considering: a. This fact was accredited by the testimonies of the witnesses and the declaration of the respondent, b. Regardless of the motivation that the respondent had when formulating such invitation, and because of the position of power of the respondent vs the complainant (evaluator vs. umpire evaluated), that invitation is inappropriate (ITTF Handbook 7.3.2.9)"*.
75. The Respondent's position at the end of the hearing was that Mr Sen's mere invitation to Dr Malik to go to his room, whatever the intention, was inappropriate, a breach of the AH-PP, and requiring of sanction.
76. However, the Sole Arbitrator is not comfortably satisfied that this is the case and considers that it has not been proven to the Sole Arbitrator's comfortable satisfaction that Mr Sen's comment amounts to "harassment" under Clause 7.3.2.9 of the AH-PP by being *"unwelcome, often persistent, attention"* in the form of *"invitations"*.
77. Pursuant to Clause 7.3 of the AH-PP, an act of harassment *"takes many forms but can generally be defined as, persistent comment, conduct, or gesture directed toward an individual or group of individuals, which is insulting, humiliating, malicious, degrading, offensive or abusive"*.
78. Mr Sen's comment was not *"insulting, humiliating, malicious, degrading, offensive or abusive"*. Indeed, both Mrs Rato and Mrs Marandi, who the Sole Arbitrator found to be credible and reliable witnesses, testified that they did not see any problem with what Mr Sen said and that he *"was trying to be helpful"*.
79. The language employed by Mr Sen to drop by his room and the context in which these words were used do not support that his conduct constituted a form of harassment within the meaning of the AH-PP either. In the case at hand, Mr Sen was asked by Dr Malik and Mrs Rato about the questions they got wrong. To reply to this request, he offered to explain the rules they got wrong but needed his computer to do so and offered to do so in several different locations (one

being his room) at the convenience of Dr Malik and Mrs Rato. Unlike “*unwelcome, often persistent, attention*”, this exchange transpired in the course of a conversation where two people asked for help and the other person offered to explain the rules they got wrong. The conversation and interaction as described by the Appellant and confirmed by two credible and reliable witnesses did not have “*the purpose or effect of interfering with [Dr Malik’s] performance, damaging [her] reputation, dignity and morale*”. It did not create “*an intimidating, hostile, or offensive environment*” either.

80. Moreover, the Sole Arbitrator is not comfortably satisfied that Mr Sen was using his “*specific situation of power*” to “*intimidate the umpires*” as argued by the Respondent. Mr Sen was not offering to change the results of the ARE exam; he just mentioned that he could discuss with Dr Malik and Mrs Rato the common mistakes they made on the rules. The Appellant confirmed at the hearing that there are no rules prohibiting an evaluator to discuss “*common mistakes on the rules*”, which the Respondent did not dispute. Therefore, the Sole Arbitrator is comfortably satisfied that Mr Sen did not make use of his position as an evaluator in an inappropriate way or with the purpose to intimidate the umpires.
81. Both Mrs Rato and Mrs Marandi asserted that they did not see any problem with what Mr Sen had said and thought he was trying to be helpful.
82. As explained by Mrs Marandi, Dr Malik said that she wanted to go to Mr Sen’s room to ask about the exam. While she said she did not want to go alone, this by itself does not constitute evidence that Dr Malik was intimidated, humiliated or offended. The fact of not wanting to go alone can be explained as a decision based on propriety or decorum rather than an expression of a feeling of fear, uncertainty or intimidation. Moreover, Mr Sen had offered multiple locations to explain the rules they got wrong, not just his room.
83. The Statutory Declarations, which are the only independent testimony in the CAS file together with the oral testimony from those same two witnesses, Mrs Rato and Mrs Marandi, confirm this:
 - Mr Marandi’s declaration states: “*Mrs Neeru Malik wanted to know which questions she got wrong. As both Mrs Neeru Malik and Mrs Celeste Araujo Rato had sat the exam, Mr Cyril Sen said to them that he could not show them the questions but could tell them which rules they got wrong. Mr Cyril Sen told Mrs Neeru Malik and Mrs Celeste Araujo Rato that **they could drop by his room or anywhere they see him to ask him to tell them which rules they got wrong***” (emphasis added).
 - Mrs Rato’s declaration states: “*As Mrs Malik was very keen to know which questions she got wrong, Mr Cyril Sen said that he could not discuss the details of the exam but that we could discuss about common mistakes on the rules. Mr Cyril Sen then said to both of us that he would first have to return to his room to check the details as his computer was in his room with the necessary information. **He then went on to say to the both of us that at any time we could drop by his room or go to the office in the hall to discuss about common mistakes on the rules***” (emphasis added).

84. Accordingly, Clause 7.3.2.9 of the AH-PP was not breached, and no sanction is required.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Cyril Sen on 20 March 2018 is upheld.
2. The decision issued by the ITTF Executive Committee on 9 March 2018 is set aside.
3. No sanction shall be imposed on Mr Cyril Sen.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.