



Arbitration CAS 2008/A/1459 Andrea Bolder, LaTasha Colander-Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, and Passion Richardson v. International Olympic Committee (IOC) & International Association of Athletics Federations (IAAF), decision of 23 February 2008

Athletics

Absence of a final decision which can be subject to an appeal to CAS

In the absence of a final decision, CAS cannot entertain an appeal.

Whereas on 15 January 2008, the athletes Andrea Bolder, LaTasha Colander-Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, and Passion Richardson filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) requesting:

- an order that the IAAF has improperly issued a decision purporting to disqualify the Appellants and stripping them of the results they achieved as members of the United States women's 4 x 100 and 4 x 400 metre relay teams at the 2000 Olympic Games in Sydney, Australia;
- an order that the IOC has improperly delegated its exclusive authority over the results of the 2000 Olympic Games to the IAAF, has improperly accepted the decision of the IAAF, has initiated a disciplinary proceeding that is prohibited by the Olympic Charter and has initiated an improper disciplinary proceeding as a result of the IOC's acceptance of the IAAF decision.

Whereas an appeals arbitration procedure has been initiated by the CAS under the reference *CAS 2008/A/1459 Bolder, LaTasha, Colander-Clark, Miles-Clark, Edwards, Gaines, Hennagan, Richardson v/ IOC & IAAF*;

Whereas by letter of 29 January 2008, the IAAF has indicated that there has been no IAAF decision, or any other decision of which the IAAF is aware, which annuls the Appellants' relay results at the 2000 Sydney Olympic Games;

Whereas in the same letter, the IAAF submits that the Appellants' Statement of Appeal is premature and that the CAS has no jurisdiction in a case where internal remedies have not yet been exhausted;

Whereas by letter of 29 January 2008, the IOC declared that it has not taken any final decision of any kind regarding the USA women's relay teams at the 2000 Sydney Olympic Games;

Whereas by letters of 29 and 31 January 2008, the Appellants objected to the statements made by the IAAF and the IOC, and stated that:

- they will prove, as the Appellants in CAS appeal number 2004/A/725 proved, that the IOC has made all the decisions detailed and challenged in the Statement of Appeal, in violation of the Olympic Charter, the relevant anti-doping code, and all applicable rules;
- they will prove that despite the fact that the IAAF admittedly does not have jurisdiction to change the results achieved by the Appellants at the Olympic Games, the IAAF has attempted to do that;
- Mr Weiss, IAAF Secretary General, has confirmed that the IAAF has made a decision interpreting the IAAF Rules in an effort to permit and recommend that the IOC punish the Appellants by annulling their results and taking away medals.

Whereas by letter of 31 January 2008, the IAAF requested that *“this matter now be placed before the President of the Appeals Division for a decision on the jurisdiction of CAS to hear the Appellants’ appeal in accordance with CAS R47”*;

Whereas by letter of 1 February 2008 the IOC confirmed the content of its letter of 29 January 2008 and confirmed that there is currently no decision against which the Appellants may file any appeal. Furthermore, the IOC invoked section C of the Code, in particular article R47 and R48 and requested that the CAS acknowledges and declares that there is no arbitrable dispute between the Appellants and the IOC;

Whereas in an amended Statement of Appeal dated 7 February 2008, the Appellants conclude that *“contrary to the positions taken by the International Olympic Committee and the International Association of Athletics Federations ... the Respondents have made the decisions alleged by the Appellants and the Appellants do have the right to appeal the decisions made to date by both the IOC and the IAAF through a panel of CAS arbitrators”*. In their detailed submission, the Appellants expose their arguments and reiterate their statement that the present case is similar to the case *CAS 2004/A/725*;

Whereas in view of the requests of the IOC and the IAAF to ask the CAS 1) to state that there is no final decision which can be the subject of any appeal to the CAS and 2) to declare that the Statement of Appeal is premature, the President of the CAS Appeals Arbitration Division, or his Deputy, is competent to deal with such requests (article S20 of the Code of Sports-related Arbitration), prior to the constitution of the Panel of arbitrators;

Whereas article R47 of the Code provides that *“an appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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”*.

Whereas article R48 of the Code provides that *“the Appellant shall submit to the CAS a statement of appeal containing: ... a copy of the decision appealed against”*.

Whereas the Appellants have not attached any formal decision to their statement of appeal of 15 January 2008; on the contrary, exhibit 4 of the statement of appeal, more specifically a letter from the IOC to the USOC dated 12 December 2007 shows that a procedure is still going on and that no final

decision has been taken with respect to the results obtained by the USA women's teams in the 4 x 100m and 4 x 400m relay competitions at the 2000 Sydney Olympic Games;

Whereas in attachment of the amended statement of appeal dated 7 February 2008, a letter of the IAAF to the USOC dated 30 November 2007 and filed as exhibit D indicates:

“Sydney Olympic Games.

Finally, for your information, the IAAF Council has recommended to the IOC Executive Board to disqualify Ms Jones and the USA women's 4 x 100m and 4 x 400m relay teams in which she competed at the Sydney Olympic Games in 2000 and to insist upon the return of all medals and diplomas. It is for the IOC Executive Board to decide on such measures and sanctions to be taken against Ms Jones and the USA relay teams in accordance with Rule 23.2.1 of the Olympic Charter and I will inform you as soon as I know of the decision in this regard”.

Whereas, in their submissions, the IOC and the IAAF have both denied the existence of any final decision in this matter;

Whereas, it appears clearly that, at this stage of the procedure, no concrete decision exists which could be appealed against by the Appellants;

Whereas in the procedure *CAS 2004/A/725*, the status of the “decision” of the IAAF (dated 18 July 2004) was not challenged by the parties, in contrast to the present procedure. Moreover, also in the procedure *CAS 2004/A/725*, it must be emphasized that the IOC had filed an application to stay the proceedings as it considered that the IOC had no dispute with the Appellants at that moment, without denying the existence of an IAAF decision, and requested the CAS to examine the Appellant's appeal against the IAAF independently; such request for a stay of the appeals procedure directed against the IOC was dismissed by the Panel;

Whereas in the present case, the Respondents clearly object to the existence of a decision which can be subject to an appeal to CAS, which constitutes a significant difference with respect to the procedure *CAS 2004/A/725*;

Whereas it appears from the current record of the case, that the IAAF had made a recommendation to the IOC with respect to the two US relay teams and that the IOC has initiated a disciplinary procedure and has written to the USOC to submit its written defence, whereafter the IOC Disciplinary Commission, and finally the IOC Executive Board, should render a final decision;

Whereas since no decision has been issued, an appeal to the CAS is useless considering that the athletes have so far not been disqualified from the 4 x 100m and 4 x 400m relay competitions of the 2000 Sydney Olympic Games;

Whereas it must be clearly stated that once the IAAF and/or the IOC has/have rendered a final decision in this matter, such decision could be appealed before the CAS;

Whereas, in conclusion, in view of article R47 and R48 of the Code of Sports-related Arbitration, in the absence of a final decision, the CAS cannot entertain the appeal. As stated above, the present CAS decision does not deprive the athletes from filing a fresh appeal at a later stage, if necessary.

The Deputy President of the CAS Appeals Arbitration Division hereby rules:

1. The statement of appeal dated 15 January 2008 and the amended statement of appeal dated 7 February 2008 filed by Andrea Bolder, LaTasha Colander-Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, and Passion Richardson cannot be entertained by the Court of Arbitration for Sport.
2. (...).