



**Arbitration CAS 2008/A/1697 Deutscher Behindertensportverband e.V. v. International Paralympic Committee (IPC), award of 27 October 2009**

Panel: Mr Lars Halgreen (Denmark), President; Mr Martin Schimke (Germany); Mr Michele Bernasconi (Switzerland)

*Aquatics (swimming)*

*Violation of a sport technical rule during the Paralympics*

*Lack of CAS jurisdiction*

**A dispute involving a referee’s decision concerning an assessment of a field-of-play situation, leading to a wrongful disqualification of a swimmer is related to sports technical rules. A CAS panel has therefore no jurisdiction in this matter, as the authority to resolve disputes related to sports technical rules in accordance with the International Paralympic Committee (IPC) rules lies with IPC, whose decision on these matters is final and enforceable.**

Deutscher Behindertensportverband e.V. (“The Appellant”) is the National Paralympic Committee for Germany, recognized by the International Paralympic Committee as the sole representative of German athletes with a disability.

International Paralympic Committee (“The Respondent” or “The IPC”) is the governing body of the Paralympic Sports Movement with the responsibility of organising the Paralympic Games.

The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the parties and the exhibits produced. This case concerns the classification of the men’s final 100 meters breaststroke race, which took place at the Paralympic Games in Beijing on 12 September 2008. The Appellant alleges that the German swimmers, Thomas Grimm and Nils Grünenberg, were wrongfully asked to return their gold and bronze medals after the medal ceremony had taken place. The replacement of the medals came after the disqualification of the winner of the race, the Mexican swimmer Pedro Rangel, had been overturned by the chief referee.

At the swimming final race of the 100 meters breaststroke for men at the Paralympic Games in Beijing, the first four swimmers were the following:

1. Pedro Rangel (Mexico)
2. Thomas Grimm (Germany)
3. Tadgh Slattery (Republic of South Africa)
4. Nils Grünenberg (Germany).

This result was published on the board in the Olympic swimming arena. However, shortly after the Mexican swimmer, Pedro Rangel, was announced on the board as being disqualified and subsequently he was approximately one minute later put on place 8. The German swimmer, Thomas Grimm, was promoted to the first position followed by the South African swimmer on the 2<sup>nd</sup> position and the German swimmer, Nils Grünenberg, on the 3<sup>rd</sup> position.

The presentation ceremony, during which the medals were handed out in the above order, took place shortly after the announcement on the result board. After the presentation ceremony had taken place, the official responsible of classification, Mr. James Hood, however, immediately approached the German team and requested the swimmers, Thomas Grimm and Niels Grünenberg, to hand over their medals, since a protest from the Mexican delegation over the disqualification of Pedro Rangel had been accepted. Thus, a new presentation ceremony was held resulting in a gold medal to Pedro Rangel, a silver medal to Thomas Grimm and a bronze medal to Tadgh Slattery.

The Mexican swimmer had been disqualified due to a technical fault in violation of Rule SM 7.7 of the IPC swimming rules, stating the following: *“During each complete cycle of one arm stroke and one leg kick, in that order, some part of the swimmer’s head shall break the surface of the water, except that after the start and after each turn the swimmer may take one arm stroke completely back to the legs and one leg kick while wholly submerged. The head must break the surface of the water, before the hands turn inward at the widest part of the second stroke”*. The disqualification of Pedro Rangel was based on one of the judge’s assessment that he had not broken the surface of the water with every stroke.

Following the disqualification of the Mexican swimmer, the Mexican delegation had filed a written complaint with the chief referee. Details of the hand-written protest were the following: *“Only one referee sees the way that the swimmer was swimming and was not the principal. He was on the central line, and consequently the referee could not have the enough vision. We consider that the vision of the judge of the last 25 meters did not see the “fault”, also the result appeared in the board, everybody watching that the Mexican swimmer was the winner. For this reason, we kindly ask you to review the result, because the swimmer has never been disqualified. And the most important that the result appeared in the board, and we have the proof (video), the result was official”*. The time noted on the protest was 19.18.

On the same evening at 19.35 the chief referee made a decision on the Mexican protest overturning the disqualification of the Mexican swimmer. The chief referee’s decision was worded as follows: *“An error by an official followed the fault by a competitor. The fault by the competitor shall be expunged”*.

The Appellant did not make any formal written complaint or protest on the day of the competition over the decision to reinstate Pedro Rangel as the gold winner. However, the Appellant alleges that the IPC officials informed the Appellant that a protest was not possible, and that the decision by the chief referee was definite.

On the next day, the Chef de Mission of the German Paralympic Committee, Dr. Carl Quade, sent a letter dated 13 September 2008 to the President of the IPC, Sir Philip Craven. In this letter Dr. Quade stated the following:

*“Dear Sir Philip,*

*I assume that the circumstances in conjunction with the mens 100 meter breast stroke SB 5 Final has come to your attention. Although NPC Germany has great respect regarding sports technical decision, I have to bring forward the strong protest of NPC Germany against the placing in this event.*

*The Mexican athlete, Pedro Rangel, was disqualified after the race according to Rule SM 7.7. This decision has not been affected neither by other teams nor the Mexican team itself. Instead of that the Mexican team lodged a protest after the race not against the disregard of Rule SM 7.7, but against the order of publication of the results. IPC followed this protest.*

*That means an objective formal error has obtained priority instead of the violation of a sports technical rule. An athlete has been disadvantaged because of the fault of the swimming officials. From my point of view this is against the spirit of fair play.*

*By the way, the medal ceremony was held based on the disqualification of the Mexican swimmer before the protest was granted. This is unacceptable and not according to the standard of a high level competition. For that reason I ask IPC to reconsider the decision.*

*Yours sincerely*

*Dr. Carl Quade, Chef de Mission NPC Germany”.*

Following his letter of 13 September 2008 Dr. Quade sent a reminder by email on 1 October 2008.

On 17 October 2008 the IPC swimming sports manager, Ms Agnes Szilak, responded to Dr. Quade’s letter of 13 September 2009:

*“Re: men’s 100 meter breast stroke SB5 at the 2008 Beijing Paralympic Games.*

*Dear Dr. Quade, Following your letter to Sir Philip Craven on the 13<sup>th</sup> September and your mail sent to IPC on October 1<sup>st</sup> I would like to clarify the situation raised in your letter in accordance with IPC Swimming Rule Book. As you are aware, NPC Mexico protested the decision of the IPC swimming officials following the disqualification of their athlete in Men’s 100 meter Breaststroke SB5 event. The protest was presented in time, on official form, and it was accepted by the Chief Referee. The disqualification of the Mexican swimmer due to technical matter was dismissed in accordance with the IPC Swimming Rules. Unfortunately, due to the tight timing of the event schedule, the result of the protest procedure was not communicated in time with the responsible personnel to stop the medal ceremony, and therefore it was held in spite of the protest being lodged and accepted. The mistake of IPC swimming officials was acknowledged in wide public by IPC on the very next day (please see IPC’s statement on [http://www.paralympic.org/release/main\\_section\\_menu/news/press\\_releases/2008\\_2009\\_13\\_a.html](http://www.paralympic.org/release/main_section_menu/news/press_releases/2008_2009_13_a.html)).*

*IPC swimming can assure you that the protest procedure was in accordance with the rules, and therefore the results published following the protest was accepted are official. I trust the above clarifies the situation. Kind regards Agnes Szilak, IPC Swimming Sports Manager, International Paralympic Committee”.*

No further correspondence between the parties has been submitted.

For the record, it should be noted that both German swimmers, Thomas Grimm and Nils Grünenberg, signed the IPC Eligibility Code Form in March 2008 prior to the Beijing Paralympic

Games. By signing these forms the athletes accepted that sports technical rules such as competition, field-of-play and classification during the Paralympic Games were under the authority of the IPC, and that any dispute that arose should be resolved by the IPC, whose decision on such matters was final and enforceable. Furthermore, the athletes accepted binding arbitration, insofar that any dispute outside the realm of sports technical rules should be submitted exclusively to the Court of Arbitration For Sport.

In the binding arbitration clause, reference is also made to the CAS ad hoc arbitration rules for the Beijing 2008 Paralympic Games. However, the CAS Court Office has informed the Panel that no ad hoc division of the CAS was in place during the Paralympic Games in Beijing in 2008.

On 7 November 2008 the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) directed against the IPC. It is not explicitly clear from the wording of the appeal, which decision the Appellant is challenging, but the Appellant submitted the following requests for relief:

*“(a) Annulment of the result obtained by Pedro Rangel in the men’s 100 meter breaststroke SB5 Competition at the Paralympics 2008. (b) Annulment of the result for this competition at the Paralympics 2008 and the redistribution of the medals and diplomas accordingly including the award of the gold medal to Thomas Grimm, the silver medal to Tadgh Slattery and the bronze medal to Niels Grünenberg. (c) Awarding of costs of the CAS Tribunal and the reimbursement of legal costs of the Appellant”.*

On 17 November 2008, the Appellant filed its Appeal Brief.

Following the answer from the Respondent, the Panel allowed the Appellant to file a second brief, which the Appellant did on the 20 of March 2009.

## LAW

1. Issues to be resolved by the Panel are the following:
  - Does CAS have jurisdiction in this matter?
  - Is the appeal admissible?
  - Only if item (a) and (b) can be answered positively, should the Appellant’s requests for relief be granted?

### CAS Jurisdiction

2. Firstly, the Panel notes that both parties acknowledge that the question of CAS jurisdiction should be decided solely in accordance with the IPC handbook § 2.8 on dispute arbitration. Thus, the reference made by the Appellant to item 1.2 in the IPC handbook (2006) does not have relevance on the question of CAS jurisdiction. The Panel also notes that no specific

arbitration agreement has been made in this matter, and that the question of CAS jurisdiction relies entirely on the interpretation of § 2.8, subsection 1, on sports technical rules.

3. In deciding whether the present dispute shall be characterised as related to sports technical rules, the Panel puts emphasis on the following facts: The Panel is of the opinion that although some confusion may be said to exist as to the basis of the Mexican delegation's protest and the chief referee's overturning of the disqualification, the nature of the dispute is still related to "*sports technical rules*" in a normal understanding of that term. In the Mexican delegation's protest, reference is made both to the fact that the referee disqualifying the Mexican swimmer did not have enough vision, but the protest also referred to the fact that the result board showed Pedro Rangel as the winner. In the chief referee's decision there are no specific references to the question whether the referee in fact had enough vision to disqualify the Mexican swimmer, but the chief referee clearly states that the official, in his view, has made an error, and subsequently the disqualification was overturned.
4. Although, the chief referee's decision in the Panel's opinion is not very clear as to which swimming rules have been violated by the official in question, the Panel believes that the dispute is indeed still relating to sports technical rules, as the chief referee's decision concerned an assessment of a field-of-play situation, which led to a wrongful disqualification of the Mexican swimmer.
5. Thus, the Panel concludes that CAS has no jurisdiction in this matter, as the authority to resolve disputes related to sports technical rules in accordance with the IPC handbook § 2.8 (1) lies with IPC, whose decision on these matters is final and enforceable.
6. The Panel has, in reaching the above decision, also rejected the argument made by the Appellant that the letter of the IPC dated 17 October 2008 should constitute a "*decision*" within the meaning of R 27 of the CAS rules. The Panel believes that the letter of 17 October 2008 from the IPC cannot, even under the broadest interpretation of the term "*decision*", be considered as such, simply because the letter does not in any way give an impression that the matter has been scrutinized or examined by the IPC in some form of appeal procedure. The Panel considers the letter mainly as a report over the occurrence of events, which took place on 12 September 2009 as well as an apology for the unfortunate situation, which the reclaiming of the medals quite understandably had resulted in.

### **Admissibility of the appeal**

7. As mentioned above, CAS has no jurisdiction in this matter. Therefore, the Panel deems it appropriate not to address the issue of admissibility.

### **Merits**

8. As stated above, CAS has no jurisdiction in this matter. Therefore, this Panel should not address the merits in this matter.
9. As for the question of the Appellant's status as party in this proceeding, the Panel notes, for the record, that the Appellant being the National Paralympic Committee for Germany recognised by the IPC, is, by way of its role and function during the Paralympic Games, entitled to bring this case forward on behalf of the German athletes. Granting the National Olympic Committee's status as appellants in cases appealed before the ad hoc divisions of the CAS is well established in CAS case law, see CAS OG 04/007 and CAS arbitration OG 08/008 & 009.

### **Conclusion**

10. Based on the foregoing and after taking into due consideration all evidence produced and all arguments made, the Panel finds that the appeal should be dismissed due to lack of CAS jurisdiction.
11. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

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

1. The appeal filed on 7 November 2008 by Deutscher Behindertensportverband e.V. against the International Paralympic Committee is dismissed for lack of CAS jurisdiction.
  2. All other motions and prayers for relief are denied.
- (...).