



Arbitration CAS 2000/A/264 G. / International Equestrian Federation (FEI), order of 23 October 2000

*Arbitration costs appeals procedures
Conditions to depart from the “free of charge” rule*

By letter of 29 February 2000, the Federazione Italiana Sport Equestri informed the FEI that G. decided to appeal against the decision of the Judicial Committee of the FEI dated 31 January 2000. The FEI transmitted this statement of appeal to the CAS Court Office by letter of 9 March 2000 (received by the CAS on 13 March 2000). On 28 March 2000, the Appellant paid the CAS Court Office fee of CHF 500.-- in accordance with art. R48 and R65.2 of the Code of Sports-related Arbitration (the “Code”). The Appellant filed his appeal brief on 31 March 2000.

In accordance with art. R53 and R54 of the Code, a Panel of CAS arbitrators has been composed of Mr. Karl-Heinz Klee (Austria), President, Mr. Jacques Baumgartner (Switzerland) and Mr. Denis Oswald (Switzerland), arbitrators. The appointment of the three arbitrators was confirmed in the “Notice of Formation of a Panel” of 18 May 2000.

On 16 June 2000, the FEI lodged a response to the appeal brief submitted by G.

By letter of 27 June 2000 (erroneously dated 27 July 2000), the parties were informed by CAS that a judgement hearing would be held on 25 July 2000 at the Headquarters of the Court of Arbitration for Sport in Lausanne. The date of the hearing was also mentioned in the Order of Procedure dated 27 June 2000 that both parties have agreed and signed.

The three arbitrators and both parties were present at the hearing of 25 July 2000. The content of the minutes is the following: “*Opening of the hearing at 09:40am; the President greets the parties; immediately, the parties request a recess as they are discussing an agreement; the hearing is in recess at 09:57am; the hearing resumes at 10:27am; the Appellant withdraws his appeal; the hearing is closed.*”

In view of the minutes of the hearing, the withdrawal of the appeal shall be recorded.

LAW

After the communication of the minutes to the parties, the President of the Panel considered that art. R65.4 of the Code should be applied in the present case.

Pursuant to art. R65.4, *“If all circumstances so warrant, the President of the Appeals Arbitration Division may decide to apply art. R64.4 and R64.5, first sentence, to an appeals arbitration, either ex officio or upon request of the President of the Panel”*. This provision allows the President of the CAS Appeals Arbitration Division to impose the arbitration costs incurred by the CAS on the parties notwithstanding art. R65.2 of the Code which provides that the appeals procedure is free of charge.

In the present matter, it appears that the parties could have been able to find an agreement prior to the hearing of 25 July 2000 or, at least, could have been able to request a postponement of such hearing in order to negotiate such agreement. Instead of that, the parties informed the members of the Panel that they had found an agreement at the beginning of the hearing only. This agreement was obtained without any intervention or assistance from the members of the Panel. Consequently, the three members of the Panel and the ad hoc Clerk made themselves available for that hearing and came to the Court of Arbitration for Sport on 25 July 2000 only to be informed that an agreement had been concluded by the parties.

In view of the circumstances of this case, the art. R64.4 and R64.5 first sentence shall be applied in the present matter.

The mission of the Court of Arbitration for Sport is to settle sports-related disputes and also to encourage the resolution of such disputes by way of conciliation (see art. R42 of the Code, applicable by analogy to the appeals procedure). Therefore, considering that the present dispute has been successfully resolved in the framework of a CAS procedure but considering also that the costs related to the hearing could have been avoided if the parties would have taken the initiative to discuss the conclusion of an agreement during the written proceedings, the parties shall contribute only to the costs related to the organization of the hearing.

In view of the circumstances of this case and taking into account the fact that the Appellant had to travel to Lausanne from Italy, it is reasonable to order that 2/3 of the arbitration costs shall be borne by the Appellant G. and 1/3 shall be borne by the Respondent FEI.

The President of the Appeals Arbitration Division of the Court of Arbitration for Sport, ruling in camera:

1. Duly notes the withdrawal of the statement of appeal filed by G.
2. Terminates the procedure CAS 2000/A/264.
3. Orders the Appellant G. to pay 2/3 of the costs incurred by the Court of Arbitration for Sport in this matter.
4. Orders the Respondent FEI to pay 1/3 of the costs incurred by the Court of Arbitration for Sport in this matter.